

EXHIBIT E

WILLIAM C. MERS KELLY, PE

February 9, 2012

<p>1 UNITED STATES DISTRICT COURT</p> <p>2 IN THE SOUTHERN DISTRICT OF INDIANA</p> <p>3 EVANSVILLE DIVISION</p> <p>4</p> <p>5 CITIZENS INSURANCE COMPANY OF</p> <p>6 THE MIDWEST, an Indiana</p> <p>7 Corporation, as Subrogee of</p> <p>8 William Magee,</p> <p>9 Plaintiff,</p> <p>10 vs. Case No. 3:11-CV-40</p> <p>11 LG ELECTRONICS, USA, INC., a</p> <p>12 New Jersey Corporation, and</p> <p>13 SEARS ROEBUCK & COMPANY, a</p> <p>14 New York Corporation,</p> <p>15 Defendants.</p> <p>16 -----</p> <p>17 The Videotape Deposition of WILLIAM C. MERS KELLY, PE</p> <p>18 Thursday, February 9, 2012</p> <p>19 Commencing at 12:24 p.m.</p> <p>20 Taken at Black and Moss, PC</p> <p>21 2301 West Big Beaver Road, Suite 720</p> <p>22 Troy, Michigan 48084</p> <p>23</p> <p>24 Before Robert E. Bouck, CSR-3530</p>	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 WILLIAM C. MERS KELLY, PE</p> <p>4 Examination by Mr. Franco 5</p> <p>5 INDEX TO EXHIBITS</p> <p>6 EXHIBITS PAGE</p> <p>7 Exhibit No. 1 33</p> <p>8 (Mers Kelly engineering report)</p> <p>9 Exhibit No. 2 34</p> <p>10 (Privilege log - Mers Kelly file)</p> <p>11 Exhibit No. 3 36</p> <p>12 (NPS view/update merchandise items list)</p> <p>13 Exhibit No. 4 37</p> <p>14 (Sign-in sheets)</p> <p>15 Exhibit No. 5 39</p> <p>16 (Office of fire marshal report)</p> <p>17 Exhibit No. 6 45</p> <p>18 (Mers Kelly CV)</p> <p>19 Exhibit No. 7 92</p> <p>20 (Mers Kelly handwritten notes)</p> <p>21 Exhibit No. 8 127</p> <p>22 (Exhibit 1 US&I photos)</p> <p>23 Exhibit No. 9 174</p> <p>24 (Mers Kelly fee schedule)</p> <p>25 (Exhibits attached)</p>
<p>1 APPEARANCES:</p> <p>2</p> <p>3 MR. BRUCE N. MOSS (P36588)</p> <p>4 Black & Moss, P.C.</p> <p>5 2301 West Big Beaver Road, Suite 720</p> <p>6 Troy, Michigan 48084</p> <p>7 (248) 458-0600</p> <p>8 Email: Brucem@bdlaw.us</p> <p>9</p> <p>10 Appearing on behalf of the Plaintiff.</p> <p>11</p> <p>12 MR. CECILIO L. FRANCO, IV</p> <p>13 Johnson & Bell, Ltd.</p> <p>14 33 West Monroe Street, Suite 2700</p> <p>15 Chicago, Illinois 60603-5404</p> <p>16 (312) 984-0260</p> <p>17 Email: Francoc@jbltd.com</p> <p>18</p> <p>19 Appearing on behalf of the Defendants.</p> <p>20</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 Jeff R. Gudme, Video Operator</p> <p>24</p> <p>25</p>	<p>1 Troy, Michigan</p> <p>2 February 9, 2012</p> <p>3 At or about 12:24 p.m.</p> <p>4 ***</p> <p>5 VIDEO OPERATOR: All right. This is DVD</p> <p>6 number one to the videotaped deposition of William Mers</p> <p>7 Kelly in the matter of Citizens Insurance versus LG</p> <p>8 Electronics being heard before the District Court,</p> <p>9 Southern District of Indiana, Case Number 3:11-CV-40.</p> <p>10 This deposition is being heard - being held</p> <p>11 at 2301 West Big Beaver Road, Suite 720, in the offices</p> <p>12 of Moss and Black, on February 9th, 2012. It is</p> <p>13 approximately 12:24. My name is Jeff Gudme, I am the</p> <p>14 videographer representing Esquire Deposition Solutions.</p> <p>15 Our court reporter today is Bob Bouck.</p> <p>16 Counsel, will you please introduce</p> <p>17 yourselves and affiliations, and our witness will be</p> <p>18 sworn in.</p> <p>19 MR. FRANCO: Cecilio Franco on behalf of the</p> <p>20 defendants.</p> <p>21 MR. MOSS: Bruce Moss on behalf of the</p> <p>22 plaintiff.</p> <p>23 WILLIAM C. MERS KELLY, P.E.,</p> <p>24 Having first been duly sworn or affirmed by the Notary</p> <p>25 Public, was examined and testified as follows:</p>



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WILLIAM C. MERS KELLY, PE

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<p>1 EXAMINATION</p> <p>2 BY MR. FRANCO:</p> <p>3 Q. Good afternoon, Mr. Kelly. Could you please state and</p> <p>4 spell your full name for the record.</p> <p>5 A. My name is William Charles Mers Kelly. And Mers Kelly</p> <p>6 is M-e-r-s, space, capital K-e-l-l-y.</p> <p>7 Q. And Mers Kelly is your complete last name, correct?</p> <p>8 A. That's correct.</p> <p>9 MR. FRANCO: Okay. Let the record reflect</p> <p>10 that this is the deposition of William Charles Mers</p> <p>11 Kelly taken pursuant to Subpoena and Notice, and sent</p> <p>12 to today's date by agreement of the parties and the</p> <p>13 witness. The record should further reflect that this</p> <p>14 deposition is being conducted in accordance with and</p> <p>15 pursuant to the Federal Rules of Civil Procedure, and</p> <p>16 the local rules of the Federal District Court of the</p> <p>17 Southern District of Indiana.</p> <p>18 BY MR. FRANCO, CONTINUING:</p> <p>19 Q. Mr. Kelly, I know you've given depositions before. But</p> <p>20 just so that you and I have a mutual understanding of</p> <p>21 how we'll proceed today, let me just explain a few</p> <p>22 things to you. First, as you can see, there's a court</p> <p>23 reporter and he is taking down everything that's said</p> <p>24 in this room. So it's important that you make all of</p> <p>25 your answers to questions verbal answers that he can</p>	<p>1 A. Yes.</p> <p>2 Q. All right. If you answer a question, we will assume</p> <p>3 that you both heard and understood, and that the answer</p> <p>4 you provided your best reasoned response, okay?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Now, Mr. Kelly, you did receive a Subpoena</p> <p>7 for your deposition today, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And attached to the Subpoena was a rider</p> <p>10 that required you to bring your entire file. Is this</p> <p>11 box that's on this table your -- does that represent</p> <p>12 your entire file in this case?</p> <p>13 A. It does. I did -- I also brought an additional copy of</p> <p>14 the -- our office file that has the copies of the</p> <p>15 invoices and things that you requested that may not be</p> <p>16 in that box.</p> <p>17 Q. Okay. Other than the invoices and your office file, is</p> <p>18 there anything else that might not be contained in that</p> <p>19 box?</p> <p>20 A. My personal file I brought with me has some personal</p> <p>21 notes and other -- I also brought a copy of a ruling</p> <p>22 for the one court case that I was involved in as far as</p> <p>23 my testimony as an expert witness.</p> <p>24 Q. Okay. All right. And those are all things -- you only</p> <p>25 have one copy of that that you have here?</p>
<p>1 actually take down, okay?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Also, only one person can speak at a time.</p> <p>4 So it's a little hard at times, but please try to -- to</p> <p>5 let me finish completely asking a question before you</p> <p>6 begin to answer, and then I will do my best to let</p> <p>7 you -- to try and let you finish completely answering</p> <p>8 the question before I begin to ask you the next</p> <p>9 question, okay?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Similarly, for questions that call for a</p> <p>12 yes or no answer, it's much better for the court</p> <p>13 reporter if you answer a yes or no, as opposed to</p> <p>14 uh-huh or huh-uh because that really doesn't make any</p> <p>15 sense on the record, okay?</p> <p>16 A. Yes.</p> <p>17 Q. All right. For all of -- strike that.</p> <p>18 I don't want you to guess or speculate for</p> <p>19 any of my questions. So if you -- if I ask you a</p> <p>20 question that you think requires you to guess or</p> <p>21 speculate, would you please let me know?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. If you don't hear or don't understand a</p> <p>24 question, let me know and I'll just ask you another</p> <p>25 question, okay?</p>	<p>1 A. No, I brought multiple copies. And I also brought a</p> <p>2 copy of my most current CV in case --</p> <p>3 Q. Oh, great. All right. Yeah, if you wouldn't mind, I'd</p> <p>4 like the copies of the -- I guess everything. The</p> <p>5 invoices, the -- your personal notes in this case, and</p> <p>6 then the ruling.</p> <p>7 MR. MOSS: You have more than one copy?</p> <p>8 THE WITNESS: The personal notes, I don't --</p> <p>9 I only have one copy, which is my original at this</p> <p>10 point.</p> <p>11 MR. MOSS: Okay. Well, just pull out those</p> <p>12 things and let's see.</p> <p>13 THE WITNESS: Okay.</p> <p>14 VIDEO OPERATOR: Bruce, could you throw your</p> <p>15 mic on.</p> <p>16 MR. MOSS: I'll speak into it, I don't want</p> <p>17 to wear it.</p> <p>18 VIDEO OPERATOR: Okay.</p> <p>19 THE WITNESS: Here is the compass. And I --</p> <p>20 these are the reports that are already in that box, I</p> <p>21 just took them out again.</p> <p>22 BY MR. FRANCO, CONTINUING:</p> <p>23 Q. Okay.</p> <p>24 A. That's up to you.</p> <p>25 Q. The reports that you have are identical to the reports</p>



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<p>1 in the box?</p> <p>2 A. Yes, those are the ones that are just on file in the</p> <p>3 office, they're just printouts.</p> <p>4 Q. Okay.</p> <p>5 MR. MOSS: Well, here. Just pull out the</p> <p>6 things that are not in the box.</p> <p>7 MR. FRANCO: Right.</p> <p>8 MR. MOSS: I'll let you look at them and</p> <p>9 then we can copy them after.</p> <p>10 MR. FRANCO: Right.</p> <p>11 THE WITNESS: That's a list of all the</p> <p>12 clients I worked for. You want a copy of this, my CV.</p> <p>13 Current CV, there we go. And --</p> <p>14 MR. MOSS: Okay. I'm going to hand you a</p> <p>15 small grouping of materials that apparently were in a</p> <p>16 separate file.</p> <p>17 BY MR. FRANCO, CONTINUING:</p> <p>18 Q. All right. And then I'll just briefly go through this</p> <p>19 stuff I was just handed, and then we'll get a copy of</p> <p>20 it later. First I see there's Google maps printout.</p> <p>21 This appears to be the Google map directions for the</p> <p>22 location of the fire, is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And then I also see some original prints of the</p> <p>25 house. And this appears to be pre-fire, is that</p>	<p>1 handwritten notes appear to have information such as</p> <p>2 what appliances were in the house, what was plugged in</p> <p>3 when Bill Magee left the house. Is this information --</p> <p>4 strike that.</p> <p>5 The top of this is dated June 2, 2010. Are</p> <p>6 these your notes that you made after speaking to Bill</p> <p>7 Magee on June 2, 2010?</p> <p>8 A. Those were the notes that I made during our scene exam</p> <p>9 on June 2nd, 2010.</p> <p>10 Q. Okay. And do you have any other notes from June --</p> <p>11 your scene exam or your discussions with Mr. Magee,</p> <p>12 other than these two pieces of paper that I'm holding?</p> <p>13 A. No.</p> <p>14 Q. Okay. I'm going to leave those notes on the top of</p> <p>15 this pile so that we can copy that later. All right.</p> <p>16 Let's move onto the next item here. The next item is</p> <p>17 your CV. The next item is a memorandum, opinion and</p> <p>18 order from the U.S. District Court, Eastern District of</p> <p>19 Kentucky, in the case of Arch Insurance Company versus</p> <p>20 Broan, B-r-o-a-n, hyphen, Nutone, N-u-t-o-n-e, LLC.</p> <p>21 You mentioned this before I think, but why -- what was</p> <p>22 the purpose of having this document in your file?</p> <p>23 A. In your request for documents, it spoke to documents</p> <p>24 concerning testimony, previous testimony, depositions</p> <p>25 and those sorts of things. And that's one. That one</p>
<p>1 correct?</p> <p>2 A. Yes. Those are from Mr. Magee. They're also included</p> <p>3 in my bulk photographs. I took pictures -- everybody</p> <p>4 at the scene, that participated in the scene -- the</p> <p>5 joint scene exam took pictures of those, I believe. So</p> <p>6 they shouldn't be new, but I brought the originals</p> <p>7 since I had them.</p> <p>8 Q. Okay. And then there's a handwritten, small piece of</p> <p>9 spiral notepad paper that says KME Trio, model</p> <p>10 79577549600. Then below that, it's repeated again.</p> <p>11 And then below that it says del.10-20-06. Are these</p> <p>12 your handwritten notes?</p> <p>13 A. Yes. That was from the refrigerator, information that</p> <p>14 I'd gotten over the phone.</p> <p>15 Q. Okay. And what did you -- who did you speak to over</p> <p>16 the phone to obtain that information?</p> <p>17 A. I don't specifically recall. I believe it was Mr.</p> <p>18 Cottingham.</p> <p>19 Q. Okay. I see a business card for Ryan Cox. And then</p> <p>20 two pages of white, looks like legal paper with blue</p> <p>21 handwritten notes. Are these your handwritten notes?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay.</p> <p>24 A. I hope you can read them.</p> <p>25 Q. It's pretty good, pretty good, they're not bad. These</p>	<p>1 concerns a -- my trial testimony.</p> <p>2 Q. Okay. In this case, Arch Insurance versus</p> <p>3 Broan-Nutone, were you retained by Arch Insurance</p> <p>4 Company?</p> <p>5 A. Yes.</p> <p>6 Q. And who were the attorneys on behalf of Arch Insurance</p> <p>7 Company in that case?</p> <p>8 A. I don't recall specifically.</p> <p>9 Q. Okay. Do you know --</p> <p>10 A. I could look it up for you.</p> <p>11 Q. No, that's okay. What firm were they, if you know?</p> <p>12 Don't recall?</p> <p>13 A. It may be on -- it would be included in that list of</p> <p>14 clients that's on there, but I don't recall</p> <p>15 specifically.</p> <p>16 Q. Okay, okay. And what kind of -- I assume it was a fire</p> <p>17 in that case?</p> <p>18 A. Yes.</p> <p>19 Q. What kind of fire?</p> <p>20 A. It was a fire that took the roof off of a fire station.</p> <p>21 Q. Okay.</p> <p>22 A. And it involved two Broan-Nutone bathroom fans.</p> <p>23 Q. Okay. And did you render opinions with respect to the</p> <p>24 cause of that fire?</p> <p>25 A. Yes.</p>



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<p>13</p> <p>1 Q. And ultimately, what was your opinion as to the cause?</p> <p>2 A. The -- one of the bathroom fans in the ceiling of one</p> <p>3 of the bathroom stalls.</p> <p>4 Q. Okay. Did you render any opinions with respect to the</p> <p>5 origin of the fire in that case?</p> <p>6 A. Basically, came specifically down to the -- that fan in</p> <p>7 that area of the bathroom, in the ceiling of the</p> <p>8 bathroom stall, and identified the failure mode in the</p> <p>9 fan.</p> <p>10 Q. Okay. But were you offering expert testimony as an</p> <p>11 origin expert in that case?</p> <p>12 A. I was supplementing our origin cause expert's</p> <p>13 testimony.</p> <p>14 Q. Okay. And it appears that the defendants challenged</p> <p>15 whether you were qualified to testify at the trial in</p> <p>16 this case?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And specifically, what opinions were they</p> <p>19 challenging?</p> <p>20 A. I'm not exactly sure which opinions. But, I mean, they</p> <p>21 were just challenging my expertise as an expert</p> <p>22 witness.</p> <p>23 Q. Okay. And when you say expertise, are you referring to</p> <p>24 your education and experience, or --</p> <p>25 A. Yes.</p>	<p>15</p> <p>1 what they had on file at our home office.</p> <p>2 Q. It looks like all of them are insurance. Are there any</p> <p>3 on here that are not insurance companies?</p> <p>4 A. Yes, there's -- there's several attorneys, I'm sure.</p> <p>5 Q. Okay. All right. The next item is a manilla folder</p> <p>6 that has your name on it. And then looks like a file</p> <p>7 number KY011000717. What is this manilla folder?</p> <p>8 A. That is a copy of our office file. So it has documents</p> <p>9 that I wouldn't have in my personal file, which would</p> <p>10 be invoicing, and documents pertaining to invoicing.</p> <p>11 Q. The first item in the folder on the left side appears</p> <p>12 to be your invoice, is this correct?</p> <p>13 A. They are invoices for my time -- my services, yes.</p> <p>14 Q. Okay. Looks like one invoice for 3,278, another for</p> <p>15 2,050, another for \$5,435.85, and then one for \$435.</p> <p>16 I'm sorry, strike that.</p> <p>17 One -- oh, \$5,435.85 were the last one. So</p> <p>18 are those the three invoices you've sent out so far?</p> <p>19 A. Again, I don't -- that's -- the office generates those</p> <p>20 and sends those out. So I'm not real familiar with</p> <p>21 them.</p> <p>22 Q. Okay. Roughly, how many hours have you -- roughly, how</p> <p>23 many hours have you put in this case so far?</p> <p>24 A. You can -- it's right on those papers.</p> <p>25 Q. Okay. These -- well, do these paper -- you don't know</p>
<p>14</p> <p>1 Q. Were they critical of your investigation itself?</p> <p>2 MR. MOSS: Well, I mean, obviously, these</p> <p>3 were legal motions, and you can go read the motions.</p> <p>4 It's the same kind of challenge that lawyers do. I</p> <p>5 mean, I'm not sure he read the pleading or even knows.</p> <p>6 MR. FRANCO: Okay.</p> <p>7 MR. MOSS: I mean, he's not the one who</p> <p>8 drafted it.</p> <p>9 BY MR. FRANCO, CONTINUING:</p> <p>10 Q. If you know?</p> <p>11 A. I don't, not specifically.</p> <p>12 Q. Okay. All right. Did that case go to trial?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And you testified at the trial in that case</p> <p>15 also?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. The next item after that memorandum opinion</p> <p>18 order is -- one, two, three -- four pages, looks like a</p> <p>19 list of a lot of insurance companies. What is this</p> <p>20 document?</p> <p>21 A. You requested a list of all the clients that I've done</p> <p>22 work for in the past five years.</p> <p>23 Q. Okay.</p> <p>24 A. I apologize, it doesn't go back five years. But it --</p> <p>25 I think it goes back about three years. And that's</p>	<p>16</p> <p>1 if this would contain all of your hours so far then, do</p> <p>2 you?</p> <p>3 A. It does contain all my hours.</p> <p>4 Q. It does?</p> <p>5 A. With the exception of preparation for this deposition.</p> <p>6 Q. Gotcha. Okay. On your invoices, the first entry here</p> <p>7 that I see is from May 20. And it says teleconference</p> <p>8 with Steve Cottingham and Mike Black. And was that</p> <p>9 your first contact on this case?</p> <p>10 A. I'm not sure. It'd be the first one I documented --</p> <p>11 documented. The reason I answered that way is it's not</p> <p>12 uncommon for Steve to call me from the scene during his</p> <p>13 initial exam, and we have an informal conversation</p> <p>14 about what he's seeing.</p> <p>15 Q. Okay. Did Steve call you from his -- from the scene</p> <p>16 when he was there and you weren't?</p> <p>17 A. I do not specifically recall on this file.</p> <p>18 Q. All right. Okay. So on May 20th, it sounds like, you</p> <p>19 spoke with Steve and with Mr. Black. And what did you</p> <p>20 discuss on that day?</p> <p>21 A. It would have been just basically the initial --</p> <p>22 getting me initially involved in the file.</p> <p>23 Q. Did you discuss any observations that Steve made at the</p> <p>24 scene on May 20, 2010?</p> <p>25 A. I do not recall specifically. But what I would -- what</p>



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<p>1 I would think we would have been talking about, since 2 this was our initial conversation, would be, generally, 3 Steve gives me some background information. And at 4 this point, I believe he was explaining to me that he 5 had narrowed the origin of this fire down to the 6 kitchen area, and there were two appliances that were 7 energized at the time, and that -- you know, he needed 8 my assistance in his origin and cause investigation. 9 Q. Okay. When he said that he had narrowed it down to two 10 appliances, which appliances was he referring to? 11 A. Again, he didn't narrow it down. What he said was is 12 there were two appliances. He narrowed it down to the 13 kitchen area, and he said that there were two 14 appliances that were energized at the time, a 15 dishwasher and this refrigerator. 16 Q. Okay. So I misspoke. You said he narrowed it down to 17 the kitchen, right? 18 A. Yes. 19 Q. Okay. But that there were two appliances that were 20 energized, and that was the dishwasher and the 21 refrigerator? 22 A. Yes. 23 Q. And what specifically did he need assistance with 24 from you? 25 A. My role in this file was to basically assist him in his</p>	<p>17 1 two appliances it was? 2 A. No. 3 Q. Did you ever confirm that those were the two appliances 4 that were energized in the kitchen? 5 A. I -- I did. 6 Q. And how did you do that? 7 A. Through Mr. Magee, Mr. William Magee. He was there and 8 he explained what had did that morning, plus also just 9 looking at the evidence. 10 Q. And so no other appliances in the kitchen were 11 energized? 12 A. When we say energized, I'd say in operation at the time 13 of the fire. 14 Q. No other appliances were in operation at the time of 15 the fire? Was the refrigerator in operation at the 16 time of the fire? 17 A. Yes. 18 Q. And what do you mean by in operation? 19 A. What I would mean is, is a refrigerator operates on its 20 own automatically when it's plugged in. And clearly, 21 someone doesn't unplug the refrigerator or turn it off 22 before they leave. 23 Q. Okay. 24 A. Okay? So where as opposed to a microwave, where you 25 have to physically go over and turn it on and cause it</p>
<p>18 1 origin and cause investigation, helping him narrow down 2 the origin and cause to a specific, in this case, 3 appliance, it ended up being. So I'd either rule out 4 or point to a specific appliance and a specific 5 failure, or it could have been branch wiring or what 6 have you. At this point in time it was basically, you 7 know, what in the area -- what were the competent 8 ignition sources in the area in the kitchen, and 9 helping him narrow it down and rule out what did and 10 didn't contribute to the fire. 11 Q. Okay. And what was his role at that point, if you 12 know? 13 A. His role is to do the primary origin and cause 14 investigation. 15 Q. Was there some particular area of his investigation 16 that he was not capable of doing that required your 17 attention? 18 A. Typically, and in this case, for instance, the origin 19 and cause investigators will involve a forensic 20 engineer when they start trying to narrow down the 21 origin and cause to specific either electrical or 22 mechanical systems, including appliances. 23 Q. Okay. When Mr. Cottingham told you that there were two 24 appliances that were energized in the kitchen, was -- 25 was your involvement then to determine which of those</p>	<p>19 1 to function. 2 Q. Even though a microwave might not be functioning like 3 cooking food at the time, it would still be energized? 4 A. Correct. That's why I distinguished between 5 operational and energized. 6 Q. All right. So when you spoke with Mr. Cottingham and 7 he narrowed it -- the origin to the kitchen, did he 8 tell you what he believed as to which product might 9 have -- if there was a product that might have caused 10 the fire? 11 A. No. We always make it a point basically to not discuss 12 those sorts of things until I've had a chance to assess 13 the scene and gather my own information. And then we 14 start comparing notes. 15 Q. And so was there a particular reason why he reference 16 the fridge and the washing machine? Was it only 17 because they were actually operating? 18 A. The dishwasher. 19 Q. Or the dishwasher? 20 A. Right, because those are the two appliances that were 21 in operation basically at the time of the fire. 22 Q. Okay, all right. And then the next entry on your 23 invoice is May 21, 2010. And it says teleconference 24 with Mr. Steve Cottingham, UIS senior investigator and 25 attorney Mr. Michael Black, research and product</p>



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<p>21</p> <p>1 information. So first, what did you and Mr. Cottingham 2 and Mr. Black discuss on the 21st? 3 A. This is the 21st of which -- what was the date again, 4 please? 5 Q. May 21, 2010. 6 A. Okay. There was some information about that Steve 7 had -- Mr. Cottingham had gathered concerning the 8 appliances. 9 Q. Which appliances? 10 A. The refrigerator, and he was working on the dishwasher 11 as well. 12 Q. Okay. And do you know where he got the information 13 from? 14 A. I believe it was from an Internet search, but I didn't 15 ask him specifically. 16 Q. And what did he say about the fridge and the 17 dishwasher? 18 A. He had not found any specific recalls involving the 19 products that he understood were in use at the time. 20 Q. Okay. Anything else? 21 A. Model -- basically model number and serial number which 22 you saw on those papers. 23 Q. Okay. And then maybe I'm not reading this correctly. 24 But did you do your own research on the 21st? 25 A. I did not.</p>	<p>23</p> <p>1 Q. Were you at the site on any days other than June 2nd? 2 A. Not that I recall. 3 Q. Okay. The verbal report to Steve Cottingham, what was 4 the verbal report that you gave him? 5 A. Essentially, my observations and opinions of what I was 6 seeing at the scene. 7 Q. Okay. And as of June 2nd, were your opinions the same 8 opinions that you have in the report that was produced 9 to me? 10 A. Yes. 11 Q. Was there anything in the verbal report that you gave 12 to Mr. Cottingham that is different from or contradicts 13 the report that I have here today? 14 A. No. 15 Q. What were the additional instructions that you received 16 from Mr. Cottingham? 17 A. Essentially, we were going to have a conference call 18 with the attorney, and fill him in on our observations 19 and where we were at. 20 Q. And so did you get other instructions or -- 21 A. They would be documented there. But after the 22 conference call, I believe in this case I was basically 23 told to await further instructions. 24 Q. Okay. 25 A. And ultimately, at some point, I was requested to write</p>
<p>22</p> <p>1 Q. Okay. Only because it says researched product 2 information. So does that just mean you talked about 3 that with -- 4 A. Basically, I went over what they -- he sent me. I went 5 on and I verified what he was -- you know, basically 6 what the sources -- I found the same information on the 7 Internet basically, but I did not specifically dig in 8 and look. 9 Q. Gotcha. June 1st, looks like you reviewed 10 investigation material, telephone conference with Steve 11 Cottingham. What investigation material did you 12 review? 13 A. Just basically the information that I had in the file 14 in preparation for the scene exam the next day. So 15 essentially, you know, what I was doing is just making 16 sure we were prepared for a multi-party scene exam. 17 Q. Okay. June 2nd, it looks like the scene exam. You met 18 with Steve Cottingham, conducted multi-party exam, 19 collected, labeled, documented evidence, photographs, 20 and then made a verbal report to Cott -- to Steve. 21 Then it says additional instructions from Steve 22 Cottingham, received instructions, set up conference 23 call with Michael Black. So first, June 2nd, was that 24 the first day that you were actually at the site? 25 A. Yes.</p>	<p>24</p> <p>1 a formal report. 2 Q. Okay. There's a June 3rd entry here, made appointment 3 with Michael Black, e-mailed photographs for conference 4 call. So did you meet with Mr. Black on June 3rd? 5 A. It was a teleconference. 6 Q. A teleconference. And what did you discuss? 7 A. Basically what -- our observations at the scene. 8 Q. Okay. And then on that conference call, was that the 9 one where -- strike that. 10 It says right here Steve Cottingham was on 11 the call? 12 A. Yes. 13 Q. Okay. And did he indicate the area that he believed to 14 be the origin of the fire on June 3rd? 15 A. Yes. 16 Q. Okay. And what did he say on the phone? 17 A. Clearly, I don't recall specifically. But he and I 18 were in 100 percent agreement as to what -- what we 19 were seeing. And basically, that the area of origin 20 was the kitchen, and specifically the area of this 21 refrigerator. 22 Q. Okay. The photographs that you e-mailed, those 23 photographs are in your file? 24 A. Yes. 25 Q. Okay. I think they might be, but I'm just going to</p>



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<p>25</p> <p>1 ask, are some of those attached to your report?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. June 8th, looks like another teleconference with</p> <p>4 Steve Cottingham. But it says here he returned to the</p> <p>5 scene with other experts to support seeing exam</p> <p>6 completion. And then it says and special REQU. Do you</p> <p>7 know what that conference call was about on the 8th</p> <p>8 with Steve?</p> <p>9 A. The -- I believe Ryan Cox, or at least his client was</p> <p>10 requesting further exam and evidence collection. They</p> <p>11 wanted to essentially sift the entire scene is my</p> <p>12 understanding.</p> <p>13 Q. Okay.</p> <p>14 A. And so I was talking to Steve. We were discussing that</p> <p>15 and how to handle that, and --</p> <p>16 Q. Okay. And what is your understanding of who Ryan Cox's</p> <p>17 client was on June 8th?</p> <p>18 A. I thought he was -- you know, to be honest with you, I</p> <p>19 don't recall specifically. It would be on our sign-in</p> <p>20 sheet. But the manufacturer of the refrigerator or --</p> <p>21 he knows.</p> <p>22 Q. Okay. On June 9th, teleconference with update,</p> <p>23 discussion with Steve Cottingham, return to scene to</p> <p>24 support scene exam completion and special REQU. So</p> <p>25 another phone call on June 9th. What was that one</p>	<p>27</p> <p>1 wanted to do more scene exams after -- after you had</p> <p>2 reached that conclusion?</p> <p>3 A. That's correct, yes.</p> <p>4 Q. Right, okay. And so you're trying to communicate with</p> <p>5 Steve about how evidence should be gathered, or if it's</p> <p>6 okay, whatever procedures they're following, but</p> <p>7 nothing that was done subsequent to June 2nd at the</p> <p>8 scene had any bearing on your opinions, do it -- does</p> <p>9 it?</p> <p>10 A. It did not.</p> <p>11 Q. Okay. The next entry is June 23rd. And it says</p> <p>12 reviewed investigation material, researched product</p> <p>13 information, made appointment with Steve Cottingham.</p> <p>14 So what was the investigation material that was</p> <p>15 reviewed on the 23rd?</p> <p>16 A. It was further investigation of the refrigerator</p> <p>17 information.</p> <p>18 Q. Okay. Were these different materials than what</p> <p>19 Mr. Cottingham first forwarded to you?</p> <p>20 A. That is where I basically went out and did my own</p> <p>21 search per se. Did a -- you know, just kind of looked</p> <p>22 on my own, in addition to what Steve had provided me.</p> <p>23 Q. And what did you find?</p> <p>24 A. I don't specifically recall. But whatever I would have</p> <p>25 found of -- pertinent, I would have either noted in my</p>
<p>26</p> <p>1 about?</p> <p>2 A. Again, he's updating me with his further discussions</p> <p>3 and plans for further scene exam activities.</p> <p>4 Q. Originally, when you were contacted, Mr. Cottingham</p> <p>5 needed assistance from you to help determine the cause</p> <p>6 and origin of the fire. Is he calling you on the 8th</p> <p>7 and the 9th because he still needs assistance in some</p> <p>8 regard?</p> <p>9 A. He's making sure that I'm aware what's going on, and</p> <p>10 that he and I are in agreement as to the plans or --</p> <p>11 you know, what we think -- how we think we should</p> <p>12 handle this.</p> <p>13 Q. Okay. And when you say handle this, what are you</p> <p>14 referring to?</p> <p>15 A. Any further scene exam activities, and whether I need</p> <p>16 -- whether or not I need to be present, and what we</p> <p>17 need to make sure happens.</p> <p>18 Q. Okay. And I assume that's because as of May 21st --</p> <p>19 strike that.</p> <p>20 As of June 2nd when you had spoken with</p> <p>21 Mr. Black, and also with Steve after your -- after your</p> <p>22 scene examination, you and both Steve concluded that</p> <p>23 the origin of the fire was in the area of the</p> <p>24 refrigerator. And if I'm reading this correctly,</p> <p>25 you're telling me that Ryan Cox and/or other parties</p>	<p>28</p> <p>1 notes or run a copy of, or it'd be in this file, the</p> <p>2 documents that we provided.</p> <p>3 Q. Okay. And then on June 30th, additional instructions</p> <p>4 from Mr. Black. What were the additional instructions?</p> <p>5 A. Basically, to await -- I believe. Usually they're</p> <p>6 listed on there. But it'd be await further</p> <p>7 instructions. I mean --</p> <p>8 Q. Okay. And then it says, also on June 30th, received</p> <p>9 instructions. Please send all engineering bulk photos</p> <p>10 to Mr. Jack T. Riley, Johnson and Bell,</p> <p>11 attorneys-at-law. And I was looking through the box</p> <p>12 here that was on the desk that you provided today.</p> <p>13 This box, correct me if I'm wrong, but maybe 99 percent</p> <p>14 of it is all photos, right?</p> <p>15 A. I don't -- I mean, certainly there's going to be a lot</p> <p>16 of photographs in there. I don't know what percentage</p> <p>17 it would be.</p> <p>18 Q. But a large portion of it's photographs, right?</p> <p>19 A. Okay.</p> <p>20 Q. Is that fair?</p> <p>21 A. I don't know, to be honest with you. I mean, I don't</p> <p>22 know how many printed pages are in there. So, I mean,</p> <p>23 but there are a large number of printed photographs in</p> <p>24 there.</p> <p>25 Q. Okay. Well, I'll just represent to you that the only</p>



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<p>29</p> <p>1 written materials that I found are right here, about an 2 inch thick. 3 A. Okay. 4 Q. These items. The rest of that appears to be 5 photographs is all I'm saying; does that sound right to 6 you? The rest of this box is mostly photographs? 7 A. Yes. 8 Q. Okay. Now, and I was looking at -- I'm only asking 9 this because those photographs that were on top of it, 10 they say prepared for Jack T. Riley, Jr., on the top of 11 that. 12 A. Okay. 13 Q. Now, is that because Mr. Black asked you to send them 14 to Jack T. Riley, Jr.? 15 A. Yeah. I mean, essentially what -- yes. I mean, I 16 would have taken all mine, put them in a manner where 17 basically I can send them to him so -- 18 Q. Okay. I just want to -- 19 A. Try to keep track of what I'm sending to whom, if you 20 know what I'm trying to say. 21 Q. Yeah. Just so you understand, I'm just trying to 22 establish, Mr. Riley did not retain you in this case, 23 did he? 24 A. No. 25 Q. Okay. All right. All right. Now, the rest of the</p>	<p>31</p> <p>1 Q. Okay. And was there a particular reason why it was 2 opened -- reopened around September? 3 A. That would have been when I received further 4 instructions to do some further work. 5 Q. Gotcha. I also see here an e-mail from Margie to 6 Deborah Andrews, was CC'ed to Larry Fore, F-o-r-e. 7 Who's Deborah and Larry? 8 A. Deborah Andrews, I believe she works out of our Atlanta 9 office. She's one of the corporate administrative 10 assistants. Larry Fore was our territorial manager for 11 our office. 12 Q. Okay. I think that's just an accounting issue. 13 MR. MOSS: You can keep going, it's okay. 14 (Mr. Moss exited deposition room at 1:03 15 p.m.) 16 BY MR. FRANCO, CONTINUING: 17 Q. Okay. Then there's an e-mail here -- strike that. 18 There's another e-mail about an invoice, 19 another e-mail about an estimated invoice. There's an 20 e-mail here from Michael Black dated August 19, 2010. 21 He says, as I explained previously, our firm is not 22 responsible for the payment of your company's bills. 23 Your invoice should be forwarded directly to our 24 client's representative Michelle Henderson. You can 25 reach her at the e-mail address indicated above. And</p>
<p>30</p> <p>1 right side of the manilla folder now, first is an 2 e-mail to -- strike that. 3 An e-mail from you to Mike Black, with CC to 4 Steve Cottingham and Rich Varsky and Margie Crutcher. 5 Who is Margie Crutcher? 6 A. She's our office administration assistant. 7 Q. Okay. 8 A. She's the person who basically puts together and 9 maintains that file. 10 Q. Okay. And it looks like here you e-mailed -- it says 11 engineering report with exhibits; is that the same 12 report that I have here? 13 A. Yes, there's only one. 14 Q. Okay. Next is an October 27th letter from Mike Black. 15 It just says that you were assigned -- your company was 16 assigned the file on the 19th. The next item is an 17 e-mail from you to Margie Crutcher, looks like 18 September 26, 2011. And your e-mail to Margie says, 19 greetings, Margie, please reopen KY011000717. First, 20 before I ask you about this e-mail, was the file closed 21 before September 26, 2011? 22 A. Typically what we do when we're awaiting further 23 instructions for an extended period of time, we'll 24 close the file or basically make it inactive, so it's 25 not showing up on reports.</p>	<p>32</p> <p>1 it says her e-mail is Mighenderso@hanover.com. Have 2 you spoken to Michelle directly ever? 3 A. Michelle? 4 Q. Henderson? 5 A. Not that I recall. 6 Q. Okay. 7 A. Sounds like those are invoices -- basically e-mails 8 concerning invoicing which Margie would have been 9 generating. 10 Q. Okay. Here's another e-mail about the invoice. August 11 4th, there's a letter from Margie to Mr. Black about 12 the invoice. June 30th, letter to Mr. Black, again, 13 about the invoice. May 21, e-mail from you to Margie, 14 attached is a new assignment sheet. And lastly, I 15 believe, first report and enclosure due at service 16 center, 5-27-10. 17 A. That sounds like the top of their assignment sheet. 18 Q. Gotcha, okay. And that's pretty much everything in 19 this manilla folder. 20 (Mr. Moss reentered deposition room at 1:05 21 p.m.) 22 THE WITNESS: And again, that's -- that's 23 the things that were outstanding or different from what 24 you already have in the box. 25 BY MR. FRANCO, CONTINUING:</p>



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<p>1 Q. Right, gotcha.</p> <p>2 MR. FRANCO: Bruce, I'm going to want a copy</p> <p>3 of this stuff. But for the dep, can I get these?</p> <p>4 MR. MOSS: Yeah. We can copy everything</p> <p>5 right now, if you want.</p> <p>6 MR. FRANCO: Sure. Yeah.</p> <p>7 (Mr. Moss exited deposition room at 1:05</p> <p>8 p.m.)</p> <p>9 MR. FRANCO: Let's get the first exhibit</p> <p>10 sticker here.</p> <p>11 (Exhibit No. 1 marked)</p> <p>12 (Recess taken at 1:06 p.m.)</p> <p>13 (Mr. Moss reentered deposition room at 1:06</p> <p>14 p.m.)</p> <p>15 BY MR. FRANCO, CONTINUING:</p> <p>16 Q. Okay. Mr. Kelly, I'm going to grab the -- the</p> <p>17 documents off the top of this box that you gave me</p> <p>18 today, which are basically the items that are documents</p> <p>19 as opposed to photographs.</p> <p>20 MR. MOSS: Let's see if you're right.</p> <p>21 Ninety percent? I think you're right. A lot of</p> <p>22 photographs.</p> <p>23 THE WITNESS: And I'll -- probably there's a</p> <p>24 lot of multiples in there, as it gets sent back and</p> <p>25 forth.</p>	<p>33</p> <p>1 in your office or something here somewhere, any prior</p> <p>2 drafts of the report that I have here today?</p> <p>3 A. Of my report?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 MR. MOSS: Did we -- I know it's on that</p> <p>8 list, but didn't we determine that it was marked</p> <p>9 initially but it really isn't because it was your --</p> <p>10 THE WITNESS: Yeah. I apologized to him. I</p> <p>11 said basically I forgot to -- when I draft the report</p> <p>12 initially --</p> <p>13 MR. MOSS: It says initial but it really</p> <p>14 wasn't. So it --</p> <p>15 BY MR. FRANCO, CONTINUING:</p> <p>16 Q. Okay. There are two documents being referenced as</p> <p>17 initial drafts. So I'm just wondering if you had ever</p> <p>18 seen an initial draft of someone else's reports?</p> <p>19 A. Well, typically, Steve and I review each others'</p> <p>20 reports.</p> <p>21 Q. Okay.</p> <p>22 A. So I should have seen a copy of his report, and I would</p> <p>23 think he saw a copy of mine.</p> <p>24 Q. Did you ever see Steve's final report?</p> <p>25 A. I believe that's it actually. I don't know if he --</p>
<p>34</p> <p>1 MR. FRANCO: Right, that always happens.</p> <p>2 THE WITNESS: To different parties and what</p> <p>3 have you.</p> <p>4 MR. FRANCO: All right. Let's -- give me</p> <p>5 your next sticker. Actually, do you mind if I just use</p> <p>6 those?</p> <p>7 COURT REPORTER: Sure.</p> <p>8 (Exhibit No. 2 marked)</p> <p>9 BY MR. FRANCO, CONTINUING:</p> <p>10 Q. Okay. The first page off the top of that box that I</p> <p>11 pulled is marked today Mers Kelly Exhibit No. 2. And</p> <p>12 this is a privilege log Mers Kelly file. Did you</p> <p>13 prepare this privilege log?</p> <p>14 MR. MOSS: No, he didn't.</p> <p>15 BY MR. FRANCO, CONTINUING:</p> <p>16 Q. Okay. So the first item on Exhibit 2 says Federal Rule</p> <p>17 Civil Procedure 26 expert report initial draft. And</p> <p>18 then the reason for removal is listed as draft report</p> <p>19 protected by FRCP 26(b)(4). The second document is</p> <p>20 engineering report initial draft. The reason for</p> <p>21 removal is draft report protected by FRCP 26(b)(4).</p> <p>22 And the last document is Steve Cottingham FRCP 26 extra</p> <p>23 report initial draft. And the reason for removal is</p> <p>24 draft report protected by FRCP 26(b)(4). First I just</p> <p>25 want to ask you, do you have anywhere, either here or</p>	<p>36</p> <p>1 but, yes.</p> <p>2 Q. Okay, gotcha. Do you know if you've seen a version of</p> <p>3 Steve's final report that was different than the final</p> <p>4 report?</p> <p>5 A. I don't -- I'm sorry. I don't think I understand the</p> <p>6 question.</p> <p>7 Q. Sure. You've -- I assume you've reviewed Steve</p> <p>8 Cottingham's final report?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever seen a document, a version of that report</p> <p>11 that he authored that's different than that final</p> <p>12 report that you saw?</p> <p>13 A. When you say different, I've not seen or talked to him</p> <p>14 about anything different than his conclusions that are</p> <p>15 documented in his final -- or in his final report.</p> <p>16 Q. Okay. All right. Now, I'm going to mark Exhibit 3</p> <p>17 here.</p> <p>18 (Exhibit No. 3 marked)</p> <p>19 BY MR. FRANCO, CONTINUING:</p> <p>20 Q. And for the record, I've just marked Mers Kelly Exhibit</p> <p>21 No. 3. There's a Bates number at the bottom Mers Kelly</p> <p>22 00019. On the top of this document is dated June 8th,</p> <p>23 2010. It says NPJ26217-54NPSU/ update merchandise item</p> <p>24 list. Let me just hand you this document and let me</p> <p>25 ask you where that came from or what it is, if you</p>



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<p>1 know?</p> <p>2 A. My -- first of all, I'm not exactly sure where this</p> <p>3 came from. But essentially what -- this is a printout</p> <p>4 that, my understanding, Mr. Magee got from Sears, or</p> <p>5 his son got from Sears.</p> <p>6 Q. Okay.</p> <p>7 A. Basically helping to identify the model number of the</p> <p>8 refrigerator that was in place.</p> <p>9 Q. Gotcha. There are a few items redacted from the</p> <p>10 document. Do you know why they're redacted?</p> <p>11 A. No. It was like that when I got it. It wasn't --</p> <p>12 Q. Okay. The next exhibit I'm going to mark here is</p> <p>13 <u>Exhibit No. 4</u>. This is going to be a group exhibit.</p> <p>14 (Exhibit No. 4 marked)</p> <p>15 BY MR. FRANCO, CONTINUING:</p> <p>16 Q. For the record, group <u>Exhibit 4</u> consists of Mers Kelly</p> <p>17 Bates numbers 00020 to Mers Kelly 00027. And these</p> <p>18 appear to be the sign-in sheets. The first page,</p> <p>19 00020, doesn't have a date on it. But I guess all I</p> <p>20 was going to ask you with respect to these items is do</p> <p>21 you have the sign-in sheet from the day that you were</p> <p>22 there?</p> <p>23 A. The top one is the one from -- is a copy of the sign-in</p> <p>24 sheet from when I was there. I think my name's listed</p> <p>25 first.</p>	<p>37</p> <p>1 Q. Oh, you know, it's quotation marks. But I believe</p> <p>2 it's -- it might be Kodiak or on behalf of LGA.</p> <p>3 A. Okay.</p> <p>4 Q. Next is June 29th. And the only reason I'm going</p> <p>5 through these is just to confirm you weren't at any of</p> <p>6 those other inspections, were you?</p> <p>7 A. No.</p> <p>8 Q. All right. Let's put that one on the bottom. Okay.</p> <p>9 I'm going to mark <u>Exhibit 5</u>.</p> <p>10 (Exhibit No. 5 marked)</p> <p>11 BY MR. FRANCO, CONTINUING:</p> <p>12 Q. For the record, <u>Exhibit 5</u> appears to be the office of</p> <p>13 the fire marshal report fire investigation. There's a</p> <p>14 fax stamp on the top, October 19th, 2011. How did you</p> <p>15 get the fire marshal's report?</p> <p>16 A. I believe from Steve Cottingham. He -- typically, the</p> <p>17 origin and cause investigator procures the reports and</p> <p>18 then shares them.</p> <p>19 Q. Okay. You received this on October 19th?</p> <p>20 A. I don't recall.</p> <p>21 Q. Just make sure, for the record, the fire marshal's</p> <p>22 report is Mers Kelly Bates numbers 00028 to 00040. Did</p> <p>23 you review this report prior to drafting your report in</p> <p>24 this case?</p> <p>25 A. I don't recall.</p>
<p>38</p> <p>1 Q. Oh. I didn't see it because it's typed and everyone</p> <p>2 else hand wrote theirs. Okay.</p> <p>3 A. I understand.</p> <p>4 Q. How did you manage to type yours?</p> <p>5 A. Just a form I carry with me. And Steve didn't have any</p> <p>6 at the time, and I offered that one to him.</p> <p>7 Q. Okay. So -- so presumably, the first one with the</p> <p>8 sticker on it is actually June 2nd?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. I also have one from June 7th, June 8th, June</p> <p>11 9th, June 10th, June 25th. And at this one, Joe</p> <p>12 McCormick was present. Who's Joe McCormick?</p> <p>13 A. Joe McCormick at the time was our territory manager for</p> <p>14 the Indianapolis or Indiana office.</p> <p>15 Q. Okay. Did you have any conversations with Mr.</p> <p>16 McCormick about the cause or origin or the fire?</p> <p>17 A. Yes. I believe we had some conversations about the</p> <p>18 origin and cause. And he was of like opinion.</p> <p>19 Basically, he -- he offered nothing contradictory to</p> <p>20 what we were looking at. In fact, he reinforced it.</p> <p>21 Q. Okay. There's June 28th, there's another individual</p> <p>22 here listed, Chad Kincaid, and Jeremy Landis. Do you</p> <p>23 know who they are?</p> <p>24 A. No, but their -- their affiliation should be listed on</p> <p>25 there.</p>	<p>40</p> <p>1 Q. Okay. Did you speak to the fire marshal before --</p> <p>2 strike that.</p> <p>3 (Recess taken at 1:16 p.m.)</p> <p>4 MR. FRANCO: Thank you. Those are yours.</p> <p>5 THE WITNESS: Thank you, sir.</p> <p>6 BY MR. FRANCO, CONTINUING:</p> <p>7 Q. Well, let me ask you this. Who was the fire marshal?</p> <p>8 A. It would be on the report. I don't recall</p> <p>9 specifically.</p> <p>10 Q. It indicates on the -- on this report it was Timothy A.</p> <p>11 Murray. Did you speak to Mr. Murray prior to --</p> <p>12 A. I did not speak to any -- as I recall, there were --</p> <p>13 none of the fire department personnel were present at</p> <p>14 the exam. And I don't recall speaking with any of</p> <p>15 them.</p> <p>16 Q. Okay.</p> <p>17 A. And to answer your earlier question, I believe that</p> <p>18 report was included in Steve Cottingham's -- as an</p> <p>19 exhibit in Steve Cottingham's report so I would have</p> <p>20 read it.</p> <p>21 Q. Oh, the fire marshal's report?</p> <p>22 A. I believe it was an exhibit in his report, so --</p> <p>23 Q. Gotcha. This report says on page -- Bates page Mers</p> <p>24 Kelly 00037, because of the severity of the damage, an</p> <p>25 exact point of origin could not be determined. Do you</p>



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<p>1 agree with that?</p> <p>2 A. No. I believe though he mentioned in one of the fire</p> <p>3 reports, I think they mentioned the kitchen area, which</p> <p>4 I do agree with.</p> <p>5 Q. The last paragraph of this report on Mers Kelly Bates</p> <p>6 00040 says additional energized structural wiring and</p> <p>7 appliances service cords inside the kitchen were</p> <p>8 examined. Damage to the conductors was identified as</p> <p>9 resulting from direct flame impingement, radiant heat</p> <p>10 and fire gases. No evidence was found revealing damage</p> <p>11 resulting from internal failures or areas of resistive</p> <p>12 heating prior to the ignition of the flames. I assume</p> <p>13 you disagree with that?</p> <p>14 A. I don't know what all he was looking at. But if it's</p> <p>15 -- if that's -- you know, if he's specifically</p> <p>16 referring to the refrigerator, yes.</p> <p>17 Q. All right. I think that covers all of the actual</p> <p>18 documents I got. Nope, I'm wrong.</p> <p>19 A. There's more.</p> <p>20 Q. There's more. A letter from Jack Riley to Mike Black.</p> <p>21 Okay. It looks like the protocol for the scene exam.</p> <p>22 Mers Kelly Bates 000 -- I'm sorry, 00009, recall alert.</p> <p>23 Was this one of the things that you found off the</p> <p>24 Internet? Sure, let me hand this to you. I'll hand</p> <p>25 you Mers Kelly 0009 -- strike that.</p>	<p>41</p> <p>1 initial draft, October 4, 2011. I think we've</p> <p>2 established that although it says initial draft, this</p> <p>3 is your final report?</p> <p>4 A. One and only.</p> <p>5 Q. Gotcha. I'll hand you Mers Kelly <u>Exhibit No. 1</u>.</p> <p>6 Actually, sorry. Yes.</p> <p>7 A. Okay.</p> <p>8 Q. All right. Was there anyone that helped you or</p> <p>9 assisted you in providing the opinions contained in</p> <p>10 your own report?</p> <p>11 A. No.</p> <p>12 Q. These are your final opinions in the case?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Are all the bases for your opinions set forth in the</p> <p>15 report?</p> <p>16 A. I'm not sure exactly what you mean, but I believe so.</p> <p>17 Q. As far as the materials that you're relying on in</p> <p>18 support of your opinions, I'm not talking about</p> <p>19 evidence or artifacts from the scene, but materials</p> <p>20 like documents or photographs, we have anything here</p> <p>21 today, don't we? There's nothing -- I'm just asking,</p> <p>22 there's nothing back at the office that you rely on in</p> <p>23 support of your opinions?</p> <p>24 A. I mean, not specifically. I mean, you know, there's</p> <p>25 obviously my experience and --</p>
<p>42</p> <p>1 Mers Kelly 00009 through 00010.</p> <p>2 A. Too many zeros, huh?</p> <p>3 Q. Yeah.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. I'll take that back. Thanks. Was this the</p> <p>6 information that Mr. Cottingham initially provided to</p> <p>7 you, or is this information that you subsequently got</p> <p>8 on your own?</p> <p>9 A. I believe it's consistent with both, but I'm not</p> <p>10 totally sure.</p> <p>11 Q. Okay, all right.</p> <p>12 A. There were -- essentially, there were two recalls that</p> <p>13 we had discussed, neither of which applied to this</p> <p>14 particular model of refrigerator.</p> <p>15 Q. Then there's a first report with enclosures. Looks</p> <p>16 like a lot of blank pages here, just with a case</p> <p>17 caption on it.</p> <p>18 A. That was my -- those are CD -- or DVD labels for when I</p> <p>19 was providing, well, photographs or what have you.</p> <p>20 Q. Gotcha. Now, I think that covers --</p> <p>21 A. And now I understand why it's so thin, is all the</p> <p>22 reports and things are just referenced in there, not</p> <p>23 necessarily contained in there.</p> <p>24 Q. All right. Okay. Let's go to -- let's hand you Mers</p> <p>25 Kelly <u>Exhibit No. 1</u> which is your engineering report,</p>	<p>44</p> <p>1 Q. Right, right.</p> <p>2 A. -- those sorts of things.</p> <p>3 Q. I'm just talking about actual physical materials?</p> <p>4 A. Yes. You have everything, yes.</p> <p>5 Q. Gotcha.</p> <p>6 A. To the best of my ability and knowledge.</p> <p>7 Q. Okay. With respect to the actual origin of the fire,</p> <p>8 is that an opinion that you rely upon from Steve</p> <p>9 Cottingham, or is that an opinion that you also have</p> <p>10 independently of Mr. Cottingham?</p> <p>11 A. Both.</p> <p>12 Q. Both. Have you ever testified as an expert with</p> <p>13 respect to, well, fire investigations?</p> <p>14 A. I'm not sure what you mean?</p> <p>15 Q. Have you ever been retained to testify with respect to</p> <p>16 investigating the actual origin of a fire?</p> <p>17 A. If you're asking me if I've ever been retained as</p> <p>18 origin and cause expert, no, no. I've always been</p> <p>19 retained as a forensic engineer.</p> <p>20 Q. And is that the capacity in which you were retained in</p> <p>21 this case?</p> <p>22 A. Yes.</p> <p>23 Q. I assume your opinion with respect to the origin of the</p> <p>24 fire is that the origin of the fire was the</p> <p>25 refrigerator --</p>



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<p>45</p> <p>1 A. Yes.</p> <p>2 Q. -- correct? And more specifically, the origin of the</p> <p>3 fire was internal to the refrigerator?</p> <p>4 A. Yes.</p> <p>5 Q. Is there anything that Mr. Cottingham says in his</p> <p>6 report, or anything that he told you verbally, that you</p> <p>7 rely upon in support of your own opinion that the</p> <p>8 origin was internal to the fridge?</p> <p>9 A. Not that I recall. I mean, like I told you, when I</p> <p>10 showed up, first thing I like to do is just walk the</p> <p>11 scene, take pictures, gather all the information with a</p> <p>12 clear, open mind. And then after I've had a chance to</p> <p>13 process all that, we start comparing notes. And then</p> <p>14 after that, it's -- there's a lot of collaboration, so</p> <p>15 --</p> <p>16 Q. But it's fair to say that you don't need to read Mr.</p> <p>17 Cottingham's report in order for you to hold the</p> <p>18 opinion that the origin of the fire was internal to the</p> <p>19 refrigerator?</p> <p>20 A. No.</p> <p>21 Q. Okay. Let's go to No. 6.</p> <p>22 (Exhibit No. 6 marked)</p> <p>23 BY MR. FRANCO, CONTINUING:</p> <p>24 Q. All right. I'm going to hand you what is marked as</p> <p>25 Mers Kelly Exhibit No. 6. And this, I believe, is your</p>	<p>47</p> <p>1 A. I worked on my own.</p> <p>2 Q. And what'd you do?</p> <p>3 A. I had my own basically appliance, I called it Will's</p> <p>4 Fix It. Actually, that's the way I earned my way</p> <p>5 through college. One of the ways I earned my way</p> <p>6 through college. I also partnered up with a friend of</p> <p>7 mine who had a van conversion business, and he was</p> <p>8 getting into the handicapped, specialized handicapped</p> <p>9 conversions. And I helped him with basically some</p> <p>10 design work and actually converting vans for</p> <p>11 handicapped people.</p> <p>12 Q. All right. Your work at the -- Will's Fix It, I think</p> <p>13 you called it?</p> <p>14 A. It was -- basically, it was my own little fix it shop.</p> <p>15 I'd fix appliances, cars, you name it.</p> <p>16 Q. All right. Did any -- did any of that involve fixing</p> <p>17 refrigerators?</p> <p>18 A. At times.</p> <p>19 Q. All right. Did any of that involve fixing Kenmore</p> <p>20 refrigerators?</p> <p>21 A. We actually owned a Kenmore refrigerator, so I'd say</p> <p>22 yes. We owned a lot of Kenmore appliances when I was</p> <p>23 growing up.</p> <p>24 Q. Did any of those involves models -- or the model</p> <p>25 involved in this case?</p>
<p>46</p> <p>1 current CV?</p> <p>2 A. This is the one I just handed you this morning?</p> <p>3 Q. No, it's not. That's the one that was attached to the</p> <p>4 report that I received.</p> <p>5 A. Okay. That -- I handed you my most current.</p> <p>6 Q. The CV this morning?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. Which the primary difference is it just included a list</p> <p>10 of testimony, I think.</p> <p>11 Q. Okay. Of course, it's in the part that I left at the</p> <p>12 office.</p> <p>13 A. Let me hand this back to you. Do you want me to hang</p> <p>14 onto this one?</p> <p>15 Q. Hang onto it for a second.</p> <p>16 A. Okay. I've got two exhibits here.</p> <p>17 Q. Okay. All right. Let's take a look at your CV here.</p> <p>18 The first thing I see on the first page there,</p> <p>19 University of Cincinnati. What year did you graduate?</p> <p>20 A. 1982.</p> <p>21 Q. Okay. And what was your degree in?</p> <p>22 A. I received a BSME.</p> <p>23 Q. Any other degrees?</p> <p>24 A. No.</p> <p>25 Q. Okay. What was your first job out of college?</p>	<p>48</p> <p>1 A. No.</p> <p>2 Q. Did any of the repairs that you did involve repair as a</p> <p>3 result of a fire?</p> <p>4 A. Are you talking about during the -- not that I recall.</p> <p>5 Q. Okay. All right. Did you ever take any coursework</p> <p>6 with respect to design or manufacture of refrigerators?</p> <p>7 A. I'm not sure. I mean, clearly, there's a lot of</p> <p>8 coursework that's related to it. I don't -- so I'm not</p> <p>9 sure I understand your question. Are you looking for</p> <p>10 specifically designing -- I mean, can you clarify your</p> <p>11 question? I mean --</p> <p>12 Q. Yeah. Specifically with respect to design of -- let's</p> <p>13 just -- let me just limit it to design right now. Did</p> <p>14 you ever take any coursework specifically related to</p> <p>15 design of refrigerators?</p> <p>16 A. I mean, clearly, I took a lot of coursework that</p> <p>17 would -- you'd use in a design, but nothing</p> <p>18 specifically for the design of a refrigerator.</p> <p>19 Q. I understand as a BSME, you would take design courses,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. Right, right.</p> <p>23 A. Yeah, in refrigeration and all those sorts of things.</p> <p>24 Q. All right. Did you ever -- were you ever employed in</p> <p>25 any capacity with respect to designing refrigerators?</p>



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<p>49</p> <p>1 A. I was employed, if you look in here, you'll see for a 2 period of time at Freund Precision/Freund Medical, and 3 then ultimately Slush Puppie, where I did a lot of 4 design of commercial slush freezers and refrigeration 5 equipment, and ice cream dispensing equipment. 6 Q. Okay. And when you worked for Freund, what type of -- 7 Freund is F-r-e-u-n-d. 8 A. It's a German pronunciation. Freund is -- 9 Q. Oh, yeah? 10 A. But he just told everybody Freund. 11 Q. All right, that's funny. Freund does mean friend? 12 A. It does. 13 Q. Okay. 14 A. And so he just said Freund. That's the way he 15 pronounced his name. 16 Q. Okay. So what types of -- well, strike that. How many 17 different types of refrigerators did you design while 18 at Freund? 19 A. Well, at Freund or Freund, when I was there, you know, 20 I -- I -- I did all the Slush Puppies. Basically, it 21 was specifically for Slush Puppies freezers, Slush 22 Puppies equipment. So, you know, I'm going to say -- I 23 mean, I don't know how to break it down. But there 24 were -- we had visual machines, we had -- I don't know 25 what you'd -- you know, countertop, we had floor</p>	<p>51</p> <p>1 keep Slush Puppies cool or cooler, right? 2 A. To cool them down below the freezing point, if that's 3 what you're trying to get to. I mean, that's usually 4 where you -- refrigeration and then freezing, you know. 5 That's where that terminology comes from. 6 Q. Okay. But were -- I guess, was there some sort of 7 system that you designed, like a walk-in freezer, or a 8 walk-in fridge or something like that, or no? Am I -- 9 because when I think of the Slush Puppie equipment, I'm 10 thinking of the actual dispensers. Is there some other 11 system that you're talking about? 12 A. No, I didn't -- from a walk-in freezer standpoint, no. 13 I mean, you're talking about an appliance. 14 Q. Right. 15 A. Basically a commercial appliance that is used. 16 Q. And the appliance is something -- strike that. 17 I'll ask you this. Is the appliance that 18 you're talking about something in a factory setting, or 19 this is in a store setting. 20 A. Talking about in use? 21 Q. Yes. 22 A. It could be both. I mean, when you say factory, I'm 23 not sure exactly what you mean. But, I mean, they can 24 be used in commercial environments as well, you know, 25 including stores.</p>
<p>50</p> <p>1 models, and then like I said, a very specialized ice 2 cream dispensing machine, we had slush vending 3 machines. I mean, it's hard to -- 4 Q. Okay. 5 A. -- to really pin it down to a number per se. 6 Q. Did any of the items designed, that you designed while 7 working at Freund involve refrigeration systems similar 8 to the one involved in this case? 9 A. I think they were very similar. I mean, it wasn't for 10 a commercial refrigerator, if that's what you're asking 11 me. But they were very similar. 12 Q. All right. 13 A. And that the same systems, principals are employed. 14 Q. Okay. And when -- in the commercial setting, the 15 similar systems that you designed, were they freezers, 16 or refrigerators, or both? 17 A. The interesting thing about slush equipment is, is, I 18 mean, you would -- the -- the systems primarily were 19 capable of doing freezing, so they were a lower 20 temperature model, so they weren't -- whereas 21 refrigeration tends to be a somewhat higher 22 temperature. 23 Q. Right. And I'm assuming, but maybe you'll correct me 24 if I'm wrong, the need for lower temperatures with 25 respect to these systems that you were designing was to</p>	<p>52</p> <p>1 Q. Okay. Were there particular aspects of the 2 refrigeration system that your designs pertained to? 3 A. I'm not sure I understand your question, I apologize. 4 Q. I guess, well, let me ask you this. So you designed 5 certain things when you worked at Freund. And I'm 6 wondering if, with respect to any particular product 7 that you designed, did you design the whole product, 8 top to bottom, or a particular component? 9 A. Yes. I was response -- basically, I was responsible 10 for the full design, implementation, manufacturing and, 11 ultimately, field support. 12 Q. Okay. 13 A. Testing, what have you. I mean, the whole nine yards. 14 Q. Okay. And was it all for Slush Puppie? 15 A. From what I can recall. 16 Q. Okay. And so when you say that the products were 17 similar, you're -- to the refrigeration in this case, 18 you're referring to the manner in which the cooling 19 system works, correct? 20 A. From the control standpoint, from -- yeah. Basically, 21 the systems employed, the mechanics of it, the 22 insulation of it, the cabinets. I mean, you know, it's 23 -- 24 Q. Right. 25 A. -- very, very similar.</p>



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<p>53</p> <p>1 Q. But with respect to actual end use, not similar, right?</p> <p>2 A. How so? I mean, yeah. These things -- actually, Slush</p> <p>3 Puppie did sell these to individuals, they did have</p> <p>4 them in their homes per se.</p> <p>5 Q. But, I mean, it's not storing food inside where</p> <p>6 somebody is opening the door and getting stuff out,</p> <p>7 right?</p> <p>8 A. Well, it's storing food inside, but you're dispensing</p> <p>9 it through a nozzle or some, you know, orifice. You're</p> <p>10 not placing separate items in and out of it, I guess</p> <p>11 you'd say. Is that where you're going?</p> <p>12 Q. Okay, right, right. Its use is limited to one thing</p> <p>13 and that's Slush Puppies?</p> <p>14 A. Well, in a broad sense. I mean, it was designed for</p> <p>15 frozen beverages or frozen desserts.</p> <p>16 Q. All right.</p> <p>17 A. The reason I say that is, I mean, Slush Puppie had a</p> <p>18 wide variety. I mean, they have adult beverages and</p> <p>19 all those sorts of things, too. So --</p> <p>20 Q. Okay. Other than Freund, what was your other</p> <p>21 experience with respect to designing refrigeration</p> <p>22 equipment?</p> <p>23 A. I actually worked directly for Slush Puppie after</p> <p>24 leaving Freund.</p> <p>25 Q. Okay, so you left. And then were you essentially doing</p>	<p>55</p> <p>1 at Enginetics, right?</p> <p>2 A. No.</p> <p>3 Q. The next job was Technology Incorporated, and it says</p> <p>4 here project engineer from '85 to '86. Again, it's</p> <p>5 fair to say that your job there didn't -- did not</p> <p>6 involve any engineering experience with respect to</p> <p>7 refrigeration, right?</p> <p>8 A. I don't recall. We were doing a variety of government</p> <p>9 projects, and whether or not one or more of those</p> <p>10 involved a refrigeration, I'm not sure. I don't recall</p> <p>11 specifically.</p> <p>12 Q. And then under Freund Precision/Freund Medical, I might</p> <p>13 be mistaken. I thought you were saying that that's</p> <p>14 where you designed a lot of the refrigeration equipment</p> <p>15 for Slush Puppie before you --</p> <p>16 A. That's correct. That's -- that's -- exactly. I mean,</p> <p>17 they were transferring some of their design and</p> <p>18 manufacture to us.</p> <p>19 Q. Okay. But then under your CV here it says,</p> <p>20 responsibilities included managing design engineering</p> <p>21 group to reverse engineer/electro/mechanical spare</p> <p>22 parts for DESC, Defense Electronics Supply Center, at</p> <p>23 Wright Patterson Air Force Base in Dayton, Ohio.</p> <p>24 A. Yes.</p> <p>25 Q. And design, develop, manufacture and commercialize</p>
<p>54</p> <p>1 the same thing for Slush Puppie?</p> <p>2 A. Yes, I was basically their -- in charge of their</p> <p>3 engineering, you know, manufacturing and customer</p> <p>4 support, parts, the whole nine yards.</p> <p>5 Q. Okay.</p> <p>6 A. I believe they called me their chief engineer, as I</p> <p>7 recall.</p> <p>8 Q. At Slush Puppie?</p> <p>9 A. Yes.</p> <p>10 Q. Before -- before Freund, you worked at MedVenture</p> <p>11 Technology?</p> <p>12 A. Not before. It's after.</p> <p>13 Q. Oh, I'm sorry.</p> <p>14 A. It's reverse chronological order.</p> <p>15 Q. Gotcha, gotcha. So after you were working on your own,</p> <p>16 was your first employment you had an outside employer</p> <p>17 was with Enginetics?</p> <p>18 A. Enginetics, yes.</p> <p>19 Q. Okay. And this basically says you designed aft facing</p> <p>20 seats for troop compartments?</p> <p>21 A. It was 9g aft facing seats was the primary project that</p> <p>22 I was hired for, was a military project --</p> <p>23 Q. Okay. So no --</p> <p>24 A. -- with the C5B.</p> <p>25 Q. No engineering experience with respect to refrigeration</p>	<p>56</p> <p>1 medical devices and commercial equipment. So I guess</p> <p>2 I'm just asking, the refrigeration experience is not</p> <p>3 listed on your CV in particular. Is that just</p> <p>4 because --</p> <p>5 A. I thought I mentioned designing for Slush Puppie. I</p> <p>6 didn't note -- don't know that I used the words</p> <p>7 refrigeration or not. But I was just trying to</p> <p>8 summarize the -- my --</p> <p>9 Q. Okay, yeah. Actually, I don't see Slush Puppie on</p> <p>10 here. Do you have it in front of you with the CV?</p> <p>11 Maybe I have it, maybe I missed it.</p> <p>12 A. My CV. Okay. Oh, I have -- basically, I think what I</p> <p>13 did is I just left it under the Slush Puppie</p> <p>14 Corporation, is essentially what I was doing for Slush</p> <p>15 Puppie, I was doing at Freund, so --</p> <p>16 Q. Gotcha. Okay. So that brings us to Slush Puppie from</p> <p>17 '91 to '93. And it says our chief engineer, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. And only engineer.</p> <p>21 Q. Okay. Have you ever had any involvement with the</p> <p>22 design and manufacture of -- strike that.</p> <p>23 Have you ever had any involvement with</p> <p>24 respect to the design of refrigerators similar to the</p> <p>25 refrigerator that was involved in this case?</p>



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<p>57</p> <p>1 A. Define similar. I mean, you're obviously looking for 2 something specific. I --</p> <p>3 Q. In terms -- yeah. I'm just talking about a fridge that 4 a consumer would buy at -- at a store, appliance store, 5 for use in the house to keep food and drinks cold, that 6 kind of refrigerator.</p> <p>7 A. Okay.</p> <p>8 Q. Have you ever designed refrigerators like that?</p> <p>9 A. No.</p> <p>10 Q. Have you ever published any articles with respect to 11 refrigeration design in any capacity?</p> <p>12 A. No.</p> <p>13 Q. Under your specialized training listed on the third 14 page of your CV, the first item there is Fire Findings, 15 investigating solid fuel burning appliance fires 2009, 16 16 hours tested. Who -- who -- was that Fire Findings? 17 Is that who put on the course?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. Either up in Michigan, I don't recall exactly the 21 address. But -- Jack Sanderson's one of the 22 proprietors, he actually investigates. He's a fire 23 investigator.</p> <p>24 Q. Okay. And then the next says Mike Holt, eight hours, 25 Fire Findings, investigation of residential dryer</p>	<p>59</p> <p>1 Q. Okay. Any of that involve refrigeration?</p> <p>2 A. I don't specifically recall. I'm sure they touched 3 upon it, but to what degree, I don't recall.</p> <p>4 Q. Okay. The last two are motor vehicle, then the very 5 last one is traffic accident reconstruction, Lynn 6 Fricke.</p> <p>7 A. Yes, the one you were talking about.</p> <p>8 Q. I'm dying to ask Chuck if he's related. So have you 9 ever done accident reconstruction before?</p> <p>10 A. To a degree.</p> <p>11 Q. Okay. Okay. The next item on your CV is familiar 12 technologies. And the first item is commercial and 13 residential appliances and lighting. It lists 14 environmental control systems, computers, washers, 15 dryers, fans, stoves, ovens, toasters, entertainment, 16 et cetera. By the e-t-c, et cetera, does that include 17 refrigerators?</p> <p>18 A. Yes. You could also say it's refrigerator being a 19 subset of environmental controls. It's controlling a 20 small environment, right, within another environment.</p> <p>21 Q. And familiar technologies, fair to say you're not 22 holding yourself out as an expert with respect to every 23 single one of these items, right? You're just saying 24 they're technologies that you're familiar with?</p> <p>25 A. Well, when you say expert, I'm not sure exactly what</p>
<p>58</p> <p>1 fires, Benton Harbor, Michigan, 16 hours tested?</p> <p>2 A. Now, that was -- you -- Mike -- yeah, there's Mike 3 Holt, and then there's Fire Findings.</p> <p>4 Q. Oh, I'm sorry. Sorry about that.</p> <p>5 A. No problem.</p> <p>6 Q. Yeah, Mike Holt was eight hours I take it, and --</p> <p>7 A. Right. That was NEC, National Electric Code.</p> <p>8 Q. Which provisions of NEC did that cover?</p> <p>9 A. Essentially, he was -- he was going through the -- 10 primarily focused on what he deemed to be the 101 11 essential keys or essential rules in the NEC Code.</p> <p>12 Q. Okay. The Fire Findings, solid fuel burning appliances 13 and -- appliance fires, 2009, were there particular 14 appliances that were discussed with that -- that 15 course?</p> <p>16 A. We were primarily focused on heat generating appliances 17 for the solid fuel burning. I mean, you were talking 18 about pellet stoves, fireplaces, fire inserts, wood 19 burning. Those sorts of things.</p> <p>20 Q. Okay. The next one on here is Fire Findings, 21 investigation of gas and electric appliance fires, 22 Benton Harbor, November 2007, 30 hours tested. What 23 appliances were covered in that course?</p> <p>24 A. I don't recall specifically, but it was a -- it was -- 25 they touched upon a wide variety.</p>	<p>60</p> <p>1 you mean. But certainly familiar enough to --</p> <p>2 Q. I mean, for example, the extent to which you're 3 familiar with computers, washers, dryers, fans, stoves, 4 ovens and toasters and entertainment stuff, your level 5 of familiarity is based on the extent to which you've 6 actually studied and worked with them, right?</p> <p>7 A. Yes.</p> <p>8 Q. And you've certainly worked on some things more than 9 others, right?</p> <p>10 A. Clearly.</p> <p>11 Q. Okay. Now, under air conditioning and refrigeration 12 equipment, I assume the reference to refrigeration 13 equipment, your familiarity comes from your experience 14 from your work at Freund and Hush Puppy, right?</p> <p>15 A. Freund and Slush Puppie, primarily.</p> <p>16 Q. Okay.</p> <p>17 A. I mean, I've done a lot of hands-on, like I told you, 18 in repairing appliances and working with different 19 things.</p> <p>20 Q. Okay. So you list here chillers, cooling towers, heat 21 pumps, package units, compressors, condensers, 22 evaporators and ammonia systems. Have you actually 23 designed those systems for any entity, company?</p> <p>24 A. Not all these.</p> <p>25 Q. Okay.</p>



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<p>61</p> <p>1 A. I -- to varying degrees, I've employed them, or worked 2 around them or investigated them.</p> <p>3 Q. Okay. Commercial heating equipment, fire protection 4 equipment, gas, lawn and garden equipment, hydraulic 5 and pneumatic equipment, manufacturing shop equipment, 6 material and equipment analysis you have. And what is 7 your experience with respect to material and equipment 8 analysis? And it says here equipment failure analysis, 9 accident analysis.</p> <p>10 A. Can you help me find where -- oh, material -- it's 11 under the heading material equipment analysis?</p> <p>12 Q. It's under the heading familiar technologies.</p> <p>13 A. Yeah, okay.</p> <p>14 Q. Under there, it says material --</p> <p>15 A. The subheading would be material and equipment 16 analysis?</p> <p>17 Q. Right.</p> <p>18 A. Equipment failure analysis, accident analysis.</p> <p>19 Q. Yes. So I guess I'm just asking about what your 20 experience is with respect to that type of analysis?</p> <p>21 A. Well, like I said, I've been fixing things since -- 22 you know, my mother will tell you since I could -- 23 about the time I could walk. And then through my 24 career as an engineer in design development, I've done 25 a lot of failure analysis.</p>	<p>63</p> <p>1 A. Not in the sense that we're talking about. I mean, 2 this -- this -- obviously, a refrigerator is for 3 storage rather than for processing.</p> <p>4 Q. On page four is a list of patents. Is there any 5 patents pertaining to refrigeration systems?</p> <p>6 A. I'm not sure if Slush Puppie ever got a patent on their 7 ice cream dispensing or slush equipment. I don't 8 specifically recall.</p> <p>9 Q. When -- when it lists here awarded 20 U.S. patents to 10 date, is that patents awarded to you personally, or to 11 the company for which you were working when you 12 designed --</p> <p>13 A. Well, when you say awarded, I mean, essentially, if 14 you're talking about -- I mean, I was named as an 15 inventor.</p> <p>16 Q. Okay.</p> <p>17 A. And all these were -- are basically owned or signed 18 over to a company.</p> <p>19 Q. Gotcha. There's a lot of medical device patents here. 20 And I think you were saying you weren't sure if Slush 21 Puppie got patents on refrigeration --</p> <p>22 A. Right. I know that we definitely talked to patent 23 attorneys, you know. Whether or not, how far they 24 pursued those and whether or not they were issued, I'm 25 not sure.</p>
<p>62</p> <p>1 Q. Okay.</p> <p>2 A. And sometimes that involved accidents. And then also 3 with my experience with, obviously, with Unified 4 Investigations and Sciences, I focused much more on 5 that.</p> <p>6 Q. The last item on the third page is residential 7 equipment, heating equipment, air conditioning 8 appliances and controls. Is that the same -- your 9 experience there is with respect to -- refer to 10 hands-on?</p> <p>11 A. Yes, yes. I mean, experience both, like I said, from 12 the repair side, and then it relates a lot to what I -- 13 my engineering experience over the years, and then 14 certainly, in the fire investigate -- forensic 15 engineering side of things.</p> <p>16 Q. Okay. The fourth page, manufacturing plant and 17 facility systems equipment. Does any of that have to 18 do with refrigeration?</p> <p>19 A. It would in the sense of preventative maintenance. You 20 know, the manufacturing of it. Let's put it that way. 21 The work environment is similar to the manufacture 22 environment where these refrigerators are produced.</p> <p>23 Q. Now, lastly, under familiar technology, manufacturing 24 and processing equipment, you wouldn't consider a 25 refrigerator to be processing equipment, correct?</p>	<p>64</p> <p>1 Q. Okay. So currently, you're employed by Unified. What 2 is your full-time -- full-time job?</p> <p>3 A. When you say full-time job?</p> <p>4 Q. I assume it's --</p> <p>5 A. I mean, my -- my primary income is derived from working 6 for Unified Investigations and Sciences.</p> <p>7 Q. Okay. And that would be as a forensic engineer?</p> <p>8 A. Correct. Senior forensic engineer.</p> <p>9 Q. And your areas of studies at University of Cincinnati 10 was mechanical engineering, right?</p> <p>11 A. Primarily. I was actually torn between mechanical and 12 electrical, so I took a lot of electrical courses, 13 anticipating getting a dual degree, which I never did 14 finish. But I always tried to max out my course load 15 every -- to a fault almost, as my advisors would tell 16 me.</p> <p>17 Q. So did you take any -- well, strike that.</p> <p>18 Let me ask you this first. What is forensic 19 engineering?</p> <p>20 A. Essentially, forensic -- that's a good question. You 21 describe it in a -- I would say it's the economical 22 application of engineering and science to -- helping to 23 understand or -- and identify causes and origins of 24 losses.</p> <p>25 Q. All right. And did you take any coursework in forensic</p>



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<p>1 engineering at University of Cincinnati?</p> <p>2 A. Not that was specifically called that. I mean, I took</p> <p>3 courses in product liability and failure analysis.</p> <p>4 Q. Was this at -- at Cincinnati?</p> <p>5 A. Yes.</p> <p>6 Q. How many courses did you take?</p> <p>7 A. I don't recall. I mean, you know, we --</p> <p>8 Q. Product liability and failure analysis, did any of the</p> <p>9 courses that you took pertain to product liability and</p> <p>10 failure analysis with respect to refrigerators?</p> <p>11 A. It was very general. Whether or not we touched upon</p> <p>12 refrigerators, I don't specifically recall.</p> <p>13 Q. Did you take courses like strength of materials?</p> <p>14 A. Yes. In fact, it was called basic strength of</p> <p>15 materials.</p> <p>16 Q. Did you take any courses in metallurgy?</p> <p>17 A. Yes.</p> <p>18 Q. Did you obtain any degrees in metallurgy?</p> <p>19 A. No.</p> <p>20 Q. Other than the product liability and failure analysis</p> <p>21 coursework that you took at Cincinnati, did you take</p> <p>22 any other coursework in that subject?</p> <p>23 A. Not that I can -- not that I can specifically recall.</p> <p>24 Q. All right. With respect to your experience in forensic</p> <p>25 engineering, where does that come from?</p>	<p>65</p> <p>1 Q. Okay. And is that, generally speaking, the same</p> <p>2 methodology you would follow in any type of forensic</p> <p>3 analysis?</p> <p>4 A. Yeah. I mean, essentially, you're talking about the --</p> <p>5 yes, it's the same.</p> <p>6 Q. Okay. And the methodology that you follow, where did</p> <p>7 you learn that? Is that from your experience, or is</p> <p>8 that something you took -- you learned in a course? Or</p> <p>9 it's written down in a book somewhere?</p> <p>10 A. It's -- scientific method is probably the most common</p> <p>11 area, you know, the core tool. You learn that both in</p> <p>12 experience, schooling, and then experience on the job.</p> <p>13 And you use that in design development. Basically, any</p> <p>14 kind of problem solving. That's -- that's your core.</p> <p>15 Q. Okay. And so from both experience and schooling. So</p> <p>16 would that be Cincinnati, the schooling part of it?</p> <p>17 A. Primarily.</p> <p>18 Q. Is there some sort of treatise or textbook or manuals</p> <p>19 that you follow that sets forth the methodology that</p> <p>20 you would sort of be governed by in doing a failure</p> <p>21 analysis?</p> <p>22 A. There are plenty of guides available to us.</p> <p>23 Q. And are there any in particular that you use?</p> <p>24 A. Well, NFPA 921 would be -- obviously, would be one.</p> <p>25 Q. Is that something that you relied upon in this</p>
<p>66</p> <p>1 A. Really, what it boils down to is it's a -- you're</p> <p>2 relying on all your experience to understand how things</p> <p>3 are put together and how they're designed, you know,</p> <p>4 how things work, how things can fail. You use all that</p> <p>5 in determining what's -- and interpreting evidence.</p> <p>6 You know, seeing and just basically -- so -- so to</p> <p>7 answer your question, I mean, it's a culmination of</p> <p>8 life experience. And one of the things that's been</p> <p>9 very helpful to me is -- is having such a broad</p> <p>10 background and large degree of hands-on experience, as</p> <p>11 well as the manufacturing, design development,</p> <p>12 commercialization, and then product support out in the</p> <p>13 field.</p> <p>14 Q. Okay.</p> <p>15 A. You know, I pretty much -- I have a really good big</p> <p>16 picture view, whereas a lot of people maybe primarily</p> <p>17 focused on design, you know. See, working for smaller</p> <p>18 companies, you wear multiple hats. Working for a large</p> <p>19 company, you're more narrowly focused. And my career</p> <p>20 focused on small companies because I liked the multiple</p> <p>21 hats, the big picture.</p> <p>22 Q. With respect to performing forensic analysis to</p> <p>23 determine a particular failure, is there some sort of</p> <p>24 scientific methodology that you would follow?</p> <p>25 A. Yes.</p>	<p>67</p> <p>1 particular case?</p> <p>2 A. Yes.</p> <p>3 Q. NFPA 921 is a guide that you would follow in a case</p> <p>4 like this involving a fire where you're trying to</p> <p>5 determine what caused the fire and where the origin</p> <p>6 was, right?</p> <p>7 A. It's a guide for fire and explosion analysis.</p> <p>8 Q. Have you read NFPA 921, the whole thing?</p> <p>9 A. I believe so. I mean, when you say read the whole</p> <p>10 thing, I'm -- yes, I mean, I read the book.</p> <p>11 Q. Okay. And the methodology recommended in 921, you</p> <p>12 agree with that? It's good methodology?</p> <p>13 A. I think it's a good guide.</p> <p>14 Q. Yeah. When you were at the scene on June 2nd, 2010,</p> <p>15 what version of NFPA 921 were you relying on?</p> <p>16 A. 2008.</p> <p>17 Q. When you authored your report, which version of NFPA</p> <p>18 921 were you relying upon?</p> <p>19 A. Primarily 2008.</p> <p>20 Q. With respect to your work on this case in determining</p> <p>21 the cause or origin of this fire, did you rely upon any</p> <p>22 of your engineering -- mechanical engineering</p> <p>23 background?</p> <p>24 A. Absolutely.</p> <p>25 Q. Okay. What -- what particular aspects of</p>
<p>68</p>	<p>1</p>



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<p>69</p> <p>1 engineering -- mechanical engineering are we talking 2 about?</p> <p>3 A. I mean, I'd just say all my -- I mean, I don't know how 4 to answer that question, to be honest with you, I mean.</p> <p>5 Q. I mean, I guess I'm a little confused because you have 6 a degree in mechanical engineering, but your expertise 7 is in the area of forensic engineering, right? And so 8 I guess what I'm wondering is to what extent is there 9 overlap between those two fields, and to what extent 10 were you looking at it from a mechanical standpoint 11 versus --</p> <p>12 MR. MOSS: Well, let me just object to the 13 form of the question. It's just ambiguous. He's a 14 mechanical engineer, he does forensic investigations. 15 I don't know that that's even possible to answer.</p> <p>16 THE WITNESS: I'm a licensed professional 17 engineer.</p> <p>18 BY MR. FRANCO, CONTINUING:</p> <p>19 Q. Okay. What does a -- oh, strike that.</p> <p>20 The licensure, is that something from the 21 State of Indiana?</p> <p>22 A. One. I mean, for this particular case, the loss 23 occurred in Indiana.</p> <p>24 Q. But you're licensed in other states?</p> <p>25 A. Yes.</p>	<p>71</p> <p>1 Q. Well, you know what? It was a bad question, actually, 2 because -- I apologize. Your opinion was that the area 3 of origin was the refrigerator so, therefore, the 4 refrigerator would be the mechanical system, right?</p> <p>5 A. Right.</p> <p>6 Q. Okay. Other than the refrigerator, were there other 7 mechanical systems that you inspected and examined?</p> <p>8 A. Yes, I looked -- yes. The other appliances, and just 9 items that we found throughout the structure.</p> <p>10 Q. Okay. From an engineering -- mechanical engineering 11 standpoint, did you do any testing, engineering testing 12 or engineering analysis on any of the appliances that 13 were in the kitchen?</p> <p>14 A. I did analysis, but I didn't do any testing per se. I 15 mean, you know, certainly no destructive testing.</p> <p>16 Q. And your analysis is based on visual observation, 17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. Sorry.</p> <p>21 VIDEO OPERATOR: It's fine, don't worry.</p> <p>22 BY MR. FRANCO, CONTINUING:</p> <p>23 Q. Do you consider yourself an expert in the area of fire 24 or explosion investigation and analysis?</p> <p>25 A. In what sense?</p>
<p>70</p> <p>1 Q. Which other states?</p> <p>2 A. Ohio, Kentucky, Tennessee, Illinois, we already 3 mentioned Indiana.</p> <p>4 Q. Okay. And --</p> <p>5 A. I also hold a -- a record at NCEES.</p> <p>6 Q. And what is that?</p> <p>7 A. It's a council record that allows you to basically -- 8 their goal was to -- your file -- they try to maintain 9 a file that would meet state licensure. So that what 10 you can do is you can go -- so they uphold to a higher 11 level than some states so that essentially, it acts 12 like the state licensure through concomitantly.</p> <p>13 Q. Okay. And was there a particular mechanical system at 14 the site of this fire that you inspected and examined 15 and tested?</p> <p>16 A. I mean, multiple.</p> <p>17 Q. Which -- okay. Which ones, I guess?</p> <p>18 A. I mean, I -- essentially, I looked at the area of 19 origin.</p> <p>20 Q. Before you go on I'll say mechanical systems. So is 21 the area of origin a mechanical system?</p> <p>22 A. Well, it contains mechanical systems. I mean, I 23 don't -- I guess what I should ask you is define a 24 mechanical -- in your language, what's your definition 25 in the sense of --</p>	<p>72</p> <p>1 Q. Well, I guess -- strike that.</p> <p>2 Let me ask you this. Is -- is forensic 3 engineering a different field, would that be considered 4 a separate field from fire investigation? Or would you 5 consider that one and the same, or overlap?</p> <p>6 A. Overlap.</p> <p>7 Q. Okay. Did you ever take any courses in explosion 8 dynamics or fire dynamics?</p> <p>9 MR. MOSS: Well, what do you mean by fire 10 dynamics? As a separate -- you believe that's some 11 discipline called fire dynamics?</p> <p>12 BY MR. FRANCO, CONTINUING:</p> <p>13 Q. Yeah, if there's a course that you took on the subject 14 of fire dynamics?</p> <p>15 A. Not specifically.</p> <p>16 Q. Did you take any courses with respect to analysis of 17 fire patterns or burn patterns?</p> <p>18 A. No.</p> <p>19 MR. MOSS: I -- just for the record, you 20 know, he's gone through in detail seminars, et cetera, 21 he's attended. I'm sure they dealt with some burn 22 patterns, et cetera. I mean, I'm not following your 23 questions, but I'm hoping we get to the substance of 24 this sometime soon.</p> <p>25 BY MR. FRANCO, CONTINUING:</p>



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<p>73</p> <p>1 Q. Are you certified as a fire investigator by the 2 International Association of Arson -- 3 A. No. 4 Q. Are you certified as a fire protection specialist -- 5 strike that. 6 Are you certified as a fire protection 7 specialist by the Certified Fire Protection Specialist 8 Board? 9 A. Easy for you to say. No. 10 Q. Okay. Are you licensed by any governmental 11 subdivisions to conduct fire or explosion 12 investigations? 13 A. I'm not sure I understand your question. 14 Q. Has any governmental body licensed you to conduct fire 15 or explosion investigations? 16 A. Well, as part of my professional engineering licensing. 17 MR. MOSS: Yeah. My objection is your 18 question seems to assume there's some license like 19 that. I don't know if that's fair to say. 20 MR. FRANCO: No, I'm not assuming that there 21 is a license or that it's required even. 22 BY MR. FRANCO, CONTINUING: 23 Q. I'm just asking if you've ever been licensed by any 24 state or federal or local government to perform fire 25 investigations?</p>	<p>75</p> <p>1 concern in the dispenser, design of the dispenser? 2 A. Yeah. I mean, we had to meet UL, NSF and CSA, and 3 ultimately, ETL was another test lab that -- test lab 4 that came into play. 5 Q. What particular materials are we talking about in that 6 system, in the Slush Puppie dispenser system? 7 A. I mean, everything from the refrigerant to the polymers 8 involved, components. 9 Q. And so what analysis would you do from an engineering 10 standpoint to determine the materials flammability of 11 refrigerants, polymers and stuff like that? 12 A. Work with the manufacturers to make sure that what we 13 were using was appropriate for the application, and at 14 times, do our own testing. 15 Q. Did you ever do materials testing with respect to -- 16 strike that. 17 Did you ever do material flammability 18 testing with respect to any plastics, things like that? 19 A. Yes. 20 Q. Okay. What type of plastics? 21 A. Mainly -- okay. I can narrow it down to mainly 22 thermoplastics. There were some thermosets, but 23 primarily thermoplastics. 24 Q. And when you say testing, are you talking about testing 25 to the point of combustion, or what type of testing?</p>
<p>74</p> <p>1 A. Only as a professional engineer. 2 Q. Okay. All right. Other than your license as a PE, is 3 there -- do you have any other licensures? 4 A. I have the one -- I think -- 5 Q. Yeah, you told me about the other ones. 6 A. -- we covered it, yeah. 7 Q. Those two, or is that -- is there more? 8 A. That's all I can recall. 9 Q. Okay. Have you ever studied heat and plane vector 10 analysis? 11 A. Not specifically. 12 Q. Okay. I know you talked about taking courses like 13 material analysis or strength of materials. Did you 14 take any courses in materials flammability? 15 A. I don't recall specifically, but I have a lot of 16 experience through the design of manufacturing various 17 products, so I understand the science, I understand the 18 process, I understand the testing. 19 Q. Does your experience in the area of materials 20 flammability from the design side, would that include 21 your experience at Freund, and also Slush Puppie? 22 A. Absolutely. 23 Q. And which -- with respect to design of refrigeration 24 systems, let's just talk about Freund for now. Were 25 there particular flammability issues that were of</p>	<p>76</p> <p>1 A. At times. 2 Q. Okay. 3 A. We're talking about material properties, so strength, 4 flammability. Combustion certainly would be one of 5 them. 6 Q. Okay. I was looking at your CV, maybe I missed it. 7 Are there any professional organizations that you're a 8 member of? Is there a lot, or -- 9 A. Well, there's some. 10 Q. Okay. All right. Let me -- are there any professional 11 organizations that you're a member of that pertain to 12 fire investigation or cause and origin investigation? 13 A. No. I mean, not specifically. When you say a member, 14 I assume you're saying a paying member? 15 Q. Paid or honorary? 16 A. I mean, I subscribe to, you know, a lot of publications 17 and, obviously, we -- as it -- our organization gets a 18 lot of these things that we have -- are privy to. 19 Q. But are you personally a member of any organizations, 20 professional organizations pertaining to fire 21 investigations or cause and origin investigations? 22 A. Let me see. I'm not -- I'm not sure. 23 Q. Okay. Have you ever been on the NFPA committee? 24 A. No. 25 Q. Okay.</p>



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<p>77</p> <p>1 A. No. Actually, I've had the privilege of talking to 2 people who have, but I've not personally. 3 Q. Okay. Have you ever been on the Society of Fire 4 Protection Engineers? 5 A. No. 6 Q. Are you a member of the American Society for Testing 7 and Materials? 8 A. No. 9 Q. What about the International Society of Fire Service 10 Instructors? 11 A. No. 12 Q. Are you in the Society of Professional Engineers? 13 A. Which ones are you talking about? Are you just talking 14 -- 15 Q. Are you a member of any of them? 16 A. I don't know if I'm -- again, I don't know if I'm a 17 current member or not. It's not something I've been 18 keeping up with. 19 Q. Are you a member of the American Academy of Forensic 20 Engineers? 21 A. No. 22 Q. You mentioned that the NFPA, you considered it to be a 23 guide. I think you agreed it was a good guide to 24 follow. But do you look at -- do you rely on it as 25 being authoritative in your field of work?</p>	<p>79</p> <p>1 That's why I'm reading from my phone. 2 MR. MOSS: Okay. I -- whatever method you 3 want, I don't care what website you go to. 4 MR. FRANCO: Well, I'm just saying, I 5 subpoenaed the witness and I get the full time. 6 MR. MOSS: Yeah. The full time ends at the 7 end of the workday. 8 MR. FRANCO: Wait a minute. I sent an 9 e-mail out saying we could start at noon if we agreed 10 that it could -- that it will go long. And you said 11 let's start at noon. 12 MR. MOSS: Long would be a workday. I -- 13 you wanted 10:00, we gave you 10:00. You asked to 14 accommodate you, we said noon. 15 MR. FRANCO: Okay. 16 MR. MOSS: He's driving six hours. He's not 17 going to be leaving here and driving 'til midnight. 18 MR. FRANCO: Well, if we have to come back, 19 we have to come back. That's all I'm saying. 20 MR. MOSS: Well, you'll have to go to where 21 he is. 22 MR. FRANCO: Well, look, Mike. I e-mailed 23 you, I said -- 24 MR. MOSS: My name's not Mike. 25 MR. FRANCO: I'm sorry, Bruce.</p>
<p>78</p> <p>1 A. Define authoritative. 2 Q. Something that you must follow? 3 MR. MOSS: No. He said it's a guide. 4 That's what he already said. 5 BY MR. FRANCO, CONTINUING: 6 Q. Okay. So you don't have to follow it, right? 7 MR. MOSS: No. He said he did follow -- I 8 mean, you know what? Let me object to the form of the 9 question. It's been asked and answered, you're 10 badgering him. We're an hour and a half into this. 11 Actually, more, two hours, and we haven't gotten to any 12 substance. And this dep is going to end at 4:30. He's 13 driving six hours. I'm not prepared to stay beyond 14 that. 15 MR. FRANCO: Why is it not going past -- I 16 mean -- 17 MR. MOSS: Because that's it. I'm telling 18 you right now, I'm leaving at 4:30. 19 MR. FRANCO: You can't do that. I 20 subpoenaed this witness. 21 MR. MOSS: Okay. Well, you'll come back. 22 If you want to spend five hours going through the same 23 questions and you're on his resume still, reading from 24 your phone. 25 MR. FRANCO: Well, my notes are on my phone.</p>	<p>80</p> <p>1 MR. MOSS: I know what the e-mail said, but 2 I find this just wholly inefficient. 3 MR. FRANCO: Well, I'm sorry but I've got to 4 cover the CV here. 5 MR. MOSS: You want to just keep covering 6 the same line over and over again? 7 MR. FRANCO: I'm not -- 8 MR. MOSS: Two hours on a CV? 9 MR. FRANCO: No. 10 MR. MOSS: Then I guess maybe we need the 11 magistrate's help into, you know, what kind of proper 12 questions, how many hours to spend on the CV. 13 MR. FRANCO: Well, that's fine. And we can 14 take it up with the magistrate. All I'm saying is that 15 -- 16 MR. MOSS: Okay. So why don't you move into 17 something more substantive than the CV, and then we'll 18 take up with the magistrate -- 19 MR. FRANCO: Well, I disagree. The CV is -- 20 MR. MOSS: How many more hours you should 21 have with the CV. 22 MR. FRANCO: Look. You know what the rule 23 provides in terms of how much time I get. We asked if 24 we could start at noon and it would go long, if that 25 was okay with you and Mr. Kelly? And you said, okay,</p>



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<p>1 let's start at noon.</p> <p>2 MR. MOSS: Yeah. Long to me is the end of</p> <p>3 the workday. Long to me isn't 'til midnight. I'm not</p> <p>4 prepared to stay here.</p> <p>5 MR. FRANCO: I didn't say stay here 'til</p> <p>6 midnight. I'm just saying --</p> <p>7 MR. MOSS: I'm not going to. I don't care</p> <p>8 what you say.</p> <p>9 MR. FRANCO: Stay until as long as the rule</p> <p>10 allows me to stay. That's all I'm saying.</p> <p>11 MR. MOSS: How many hours do you want?</p> <p>12 MR. FRANCO: Well, I don't know how long</p> <p>13 it's going to take until I'm done here. But I'm</p> <p>14 certainly entitled up to the limit provided by the</p> <p>15 rules.</p> <p>16 MR. MOSS: What's the limit provided by the</p> <p>17 rules?</p> <p>18 MR. FRANCO: Seven hours.</p> <p>19 MR. MOSS: Okay. I'm not -- I don't have</p> <p>20 seven hours today.</p> <p>21 MR. FRANCO: Well, hey. That's why I</p> <p>22 e-mailed and asked if it would be okay?</p> <p>23 MR. MOSS: No, you never said you would --</p> <p>24 intend to take seven hours.</p> <p>25 MR. FRANCO: I didn't say I'm going to take</p>	<p>81</p> <p>1 A. I can't think of any specifically.</p> <p>2 Q. All right. Now, I think the CV that with was</p> <p>3 attached -- or marked as an exhibit today, you might</p> <p>4 have indicated is not the most current one. The one</p> <p>5 you have today is the most current one?</p> <p>6 A. Yes.</p> <p>7 Q. What's on the one today?</p> <p>8 A. As I mentioned, the primary difference is deposition</p> <p>9 testimony experience.</p> <p>10 Q. Gotcha. Okay. All right. Do you have <u>Exhibit 1</u> in</p> <p>11 front of you? Yes, you do.</p> <p>12 A. Do you want both of these?</p> <p>13 Q. Yeah, thanks. I'll hand you back <u>Exhibit 1</u>.</p> <p>14 A. Okay.</p> <p>15 Q. Do you have a copy of your deposition experience in</p> <p>16 front of you, your own copy?</p> <p>17 A. I do not, but I think I can get one. I tried to have</p> <p>18 all that available here. I do have a copy of my most</p> <p>19 current CV, so I think it's in there. That's the</p> <p>20 testimony, okay.</p> <p>21 Q. Mind if I just see it real quick?</p> <p>22 A. You want the whole thing, or just --</p> <p>23 Q. Just the list of testimony.</p> <p>24 A. I believe it matches up what with what you have there.</p> <p>25 Q. Okay.</p>
<p>82</p> <p>1 seven hours.</p> <p>2 MR. MOSS: Try to get to something</p> <p>3 substantive. So far, all we've done, in over two</p> <p>4 hours, is your view of questioning his CV.</p> <p>5 MR. FRANCO: Well, it's a major issue in the</p> <p>6 case.</p> <p>7 MR. MOSS: Major issue? You have his CV.</p> <p>8 MR. FRANCO: Let's take a break.</p> <p>9 VIDEO OPERATOR: All right. It is 2:20, and</p> <p>10 we are going off the record. I need to switch out the</p> <p>11 DVD's.</p> <p>12 (Recess taken at 2:22 p.m.)</p> <p>13 VIDEO OPERATOR: It is now 2:33, and we are</p> <p>14 back on the record in the videotaped deposition of</p> <p>15 William Mers Kelly. Counsel.</p> <p>16 BY MR. FRANCO, CONTINUING:</p> <p>17 Q. Okay. Mr. Kelly, back to where we left off here. NFPA</p> <p>18 921 is something you consider to be a guide, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Are there instances in which it's -- you think it's</p> <p>21 permissible to deviate from following that guide?</p> <p>22 A. Define deviate.</p> <p>23 Q. To not follow it?</p> <p>24 A. To not follow it?</p> <p>25 Q. Right.</p>	<p>84</p> <p>1 A. There may have been one additional, I don't remember.</p> <p>2 Q. Okay. I'm going to hand what you've -- your own copy</p> <p>3 back to you.</p> <p>4 A. Okay.</p> <p>5 Q. And I'll go through the one that I have on my list, and</p> <p>6 then you can just read to me what I didn't read off of</p> <p>7 my list, okay? That's probably the fastest way. Looks</p> <p>8 like January 1998, you gave a deposition as a fact</p> <p>9 witness, a case Bifur-Tech versus Medlecture, is that</p> <p>10 right?</p> <p>11 A. Okay. I didn't -- I'm not seeing it on my list, but</p> <p>12 okay.</p> <p>13 Q. Okay. Well, I guess, let me just ask you, do you</p> <p>14 recall testifying as a fact witness in that case,</p> <p>15 Bifur-tech versus --</p> <p>16 A. I was deposed.</p> <p>17 Q. Okay. And then I have on my list, this is the version</p> <p>18 that I got, and it's dated October 6th, 2011 -- I</p> <p>19 thought it was attached.</p> <p>20 A. It was -- those were part of the exhibits to the</p> <p>21 report, I think.</p> <p>22 Q. Right.</p> <p>23 A. They were separate. And then what I did is in our</p> <p>24 latest update on-line for CV's, it's now incorporated</p> <p>25 in it.</p>



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WILLIAM C. MERS KELLY, PE

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<p>85</p> <p>1 Q. Okay. Well, let's just go to the August 18, '09. Is 2 that one your version? 3 A. Yes. 4 Q. And that's the Sentry Insurance versus Nordyne, 5 N-o-r-d-y-n-e? 6 A. Yes. 7 Q. All right. 8 A. They're a furnace manufacturer. 9 Q. And then there was also May 5, 2011, we might have 10 talked about this one, Arch Insurance versus 11 Broan-Nutone? 12 A. Right, that was a deposition. 13 Q. Okay. And then September 13th through 14th, Arch 14 Insurance versus Broan-Nutone? 15 A. That was actually a trial. 16 Q. Gotcha. September 30th, EMC Hamilton versus Houston, 17 Inc.? 18 A. Hutson, Inc. 19 Q. Hutson, Inc.? 20 A. Brandeis and Sennebogen. 21 Q. Okay. Are there other ones now I haven't read? 22 A. Kentucky Farm Bureau -- let's see. What basically -- 23 well, let me put my glasses on so I can -- my eyes are 24 starting to get tired. You want me to read it to you? 25 Q. Just the one -- just the case name, that's all.</p>	<p>87</p> <p>1 Q. Roughly. 2 A. Roughly, half dozen. 3 Q. Of those roughly half dozen, were any of those Kenmore 4 brand refrigerators? 5 A. I don't recall. 6 Q. Of those roughly half dozen, were any of those LG brand 7 refrigerators? 8 A. I don't recall. 9 Q. Of those roughly half dozen, were any of them purchased 10 from Sears, if you recall? 11 A. I don't recall. 12 Q. Okay. Let's turn to Exhibit 1 which is your report. 13 Okay. First, on the second page of your report, under 14 exhibits, it lists the 47 digital photographs, pictures 15 of a similar Kenmore model refrigerator, LG and Sears 16 Kenmore refrigerator recall, dated June 30, 2005, and a 17 DVD containing 508 bulk photos that were taken. Again, 18 those are all things that are in this box here, right? 19 A. Yes. 20 Q. Gotcha. 21 A. And those were all things that are part of this report. 22 Q. Okay. Page two, paragraph three says, my knowledge of 23 the circumstances regarding this loss at the time of 24 this report was based on discussions with Mr. Steve 25 Cottingham, Unified Investigations and Science --</p>
<p>86</p> <p>1 A. Kentucky Farm Bureau Mutual Insurance Company, a/s/o 2 Mallie Hodson, plaintiff, and Mallie Hodson intervening 3 plaintiffs versus Wade Hatchell Heating and Cooling, 4 Inc. Do you want the civil action or whatever? 5 Q. No, that's okay. Just the -- was there another one, or 6 is that it? 7 A. I believe that is it. 8 Q. Okay. So for all the cases in which you've testified 9 either at deposition or trial, did any of those involve 10 refrigerators? 11 A. No. 12 Q. Have you ever been retained in a case, other than this 13 one, where you testified that the -- strike that. 14 Have you ever been retained in a case other 15 than this case where you rendered the opinion that a 16 refrigerator caused a fire? 17 A. Any case that I've ever -- yes. 18 Q. Right. And none -- are any of those listed on the -- 19 A. I've not been deposed. 20 Q. All right. Okay. Roughly, how many have you 21 testified -- strike that. 22 Roughly, how many cases have you rendered 23 the opinion that a refrigerator failed and caused a 24 fire. 25 A. I don't recall specifically. You want me to estimate?</p>	<p>88</p> <p>1 Sciences senior investigator, and discussions with Mr. 2 Magee, the insured, Mr. Dan Murray, a neighbor, and 3 multi-party exam participants. Were those 4 conversations -- those were the conversations you had 5 at the site on -- 6 A. At the scene exam primarily, yes. 7 Q. Other than your actual examination at the site and your 8 conversations with those individuals, is there any 9 other basis for your understanding of how the fire 10 actually occurred that day? 11 A. I'm not sure I understand your question. 12 Q. Bad, bad question. Other than -- I shouldn't have said 13 how. Other than your conversations with Mr. 14 Cottingham and the other individuals at the site, and 15 also your observations of the artifacts at the site, is 16 there any other bases for your understanding of the 17 facts and circumstances leading up to the fire? 18 A. As more of the background? 19 Q. Yeah, right, right. 20 A. Okay. Those are my sources. 21 Q. Okay. So Mr. Magee was there on -- or, strike that. 22 Mr. Meyer was there on June 2nd? 23 A. Yes. 24 Q. What did Mr. Meyer tell you about what he observed when 25 he was at the site?</p>



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<p>89</p> <p>1 A. What we did is we had him actually walk through what 2 his recollections of the occurrences of the day of 3 the -- date of loss. So he talked about his initial 4 observations from the road, driving up the driveway, 5 meeting two individuals there. Then the main thing we 6 were focused on from that point is we had him stand in 7 the doorway, just do a walk through. We were actually 8 at the scene, so he could actually just go through the 9 motions of exactly what he did and what he saw that 10 day. 11 Q. Okay. And what did he explain to you, particularly 12 with respect to observations of fire? 13 A. The -- he -- basically, he observed heavy fire from the 14 road. In other words, this bright glow, flames 15 emanating from the roof. I think he said it was behind 16 or beside the main peak of the roof. 17 His main focus was making sure nobody was in 18 the house. So he went through the patio door, looked 19 in, saw fire and a lot of smoke, didn't see anybody; 20 then headed around, tried to get in the garage. I 21 think he ultimately got into the garage and found there 22 was no cars in the garage. He tried to make entry 23 through the garage door, entry door into the house, 24 again was met with heavy smoke. Don't recall any 25 flames; debated about and worked on trying to get</p>	<p>91</p> <p>1 A. Yes, absolutely. 2 Q. All right. And then was Mr. Magee also hearing this? 3 A. He was -- he was there off and on during the day. I 4 don't recall specifically whether it was there. I'm 5 thinking he was there during that interview, but I'm 6 not 100 percent positive. 7 Q. Okay. At the scene, did you talk to Mr. Magee, and did 8 he explain to you what appliances were located where in 9 the house, and what was plugged in? 10 A. Yes. 11 Q. Okay. And what did he tell you? 12 A. The things that stand out most in my mind, I mean, 13 again, he did this in front of all of us because we 14 went through the background. And then we -- he talked 15 about how the house was wired, when the house was 16 completed, things that are in my notes, basically. The 17 one thing that was real interesting was is he talked 18 about a home run for each appliance. In other words, 19 each appliance had its own circuit and own breaker, 20 which was unusual. I mean, he was trying to be very 21 cautious. I mean, this was his castle, per se. 22 Q. Okay. 23 A. And so he -- he was going out of his way to do what he 24 thought was best. 25 Q. Okay. Did he tell you anything about the electrical</p>
<p>90</p> <p>1 things out of the garage, I guess, at some point. But 2 anyway, worked his way around to the back of the house. 3 At that point he saw heavy fire emanating 4 from the back of the house and decided, okay -- that I 5 think he went into a little bit of a salvage mode for 6 -- you know, getting things out of the garage that 7 hadn't been burned yet possibly, and then decided he 8 wanted to -- before he got blocked in by the fire 9 department to go ahead and leave. He didn't think he 10 had much more to add. 11 Q. Okay. When he was telling you all this, who was 12 present for that conversation? 13 A. Everyone at the -- who signed that sign-in sheet, 14 basically. So everybody, all the parties at the 15 multi-party exam. 16 Q. All right. And the sign-in sheet is the June 2nd one? 17 A. Yes. 18 Q. Actually, let me hand it back to you. Kelly Exhibit 4, 19 the first page of Exhibit No. 4, just tell me who all 20 is on that sign-in sheet? 21 A. Myself, Bill Mers Kelly, Ryan Cox, with Kodiak, who was 22 representing Whirlpool, and Steve Cottingham, Unified 23 Investigations and Sciences. 24 Q. Okay. So Mr. -- Mr. Meyer was saying all this, and 25 both you, Ryan and Steve were also present for that?</p>	<p>92</p> <p>1 system in the house and how it was constructed or set 2 up? 3 A. Yes. I believe it's in my notes. I don't recall all 4 the details. But essentially, it was constructed -- 5 the house was constructed in 2004. The electric -- I 6 think he -- the electrical contractors, for some 7 reason, ended up not doing the final finish work. 8 Q. Okay. 9 A. Which mainly consisted of switches and, you know, the 10 things you put in after your finish painting. 11 Q. Okay. 12 A. So it's more covers and things like that, I think. 13 Q. All right. And you say it's in your notes. The notes 14 that you're referring to, are those the handwritten 15 notes that we copied earlier today? 16 A. Yes, there's two pages. 17 Q. All right. I'm going to mark our next exhibit. 18 (Exhibit No. 7 marked) 19 BY MR. FRANCO, CONTINUING: 20 Q. Kelly Exhibit No. 7 is your handwritten notes that we 21 copied. It's two pages. And I've put the sticker on 22 the top center of the first page just so I didn't cover 23 your notes here. Let me just hand you the exhibit, and 24 why don't you just tell me what Mr. Magee related to 25 you as being plugged in and not plugged in.</p>



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<p>93</p> <p>1 A. So to answer your question about what was plugged in 2 and not plugged in, he talked about -- if you -- 3 basically on the background of what he did that 4 morning, he talked about getting clothes out of the 5 dryer, so I would assume that that was plugged in. 6 (Mr. Moss exited deposition room at 2:52 7 p.m.) 8 THE WITNESS: He started the dishwasher 9 before he left. Did no cooking or anything that 10 morning. Let's see, so the dishwasher would have been 11 energized. Bill insisted every appliance was on its 12 own circuit, all outlets -- all outlets not used. He 13 talked about a coffee maker that he got from his mom. 14 He was thinking it was like a Mr. Coffee 1977 vintage. 15 A black and Decker toaster, plugged in, blender not 16 plugged in. Black and Decker can opener was plugged 17 in. Range top was -- that was the sole propane 18 appliance, my recollection, it was not used that 19 morning. And refrigerator, obviously, was plugged in. 20 The lights weren't on in the house when he left. 21 BY MR. FRANCO, CONTINUING: 22 Q. Is that it, or -- 23 A. I think that's -- those are the things that answer your 24 question. 25 Q. Okay. Do you know what was -- what electronics or</p>	<p>95</p> <p>1 I mean, we all three worked together. But we were 2 responsible because we were representing the 3 homeowners, people who owned, you know, that particular 4 piece of property. 5 Q. Okay. What other appliances were taken on the 2nd? 6 A. There's an evidence list. I'm thinking it was the 7 refrigerator and some of the dig -- you know, I don't 8 recall exactly what else. 9 Q. Okay. 10 A. But it'll be listed on our evidence list. 11 Q. Was that attached to your report or no? 12 A. It was attached to Steve's report. 13 (Mr. Moss reentered deposition room at 2:55 14 p.m.) 15 BY MR. FRANCO, CONTINUING: 16 Q. Steve's report. Okay. 17 A. If you go back to his exhibits, or actually, in the 18 latter part of his report, I think he's also -- he's 19 got a list in there. 20 Q. All right. It's not on this one. 21 A. That looks like it. Those are it, on the front, if 22 you -- yeah. 23 Q. These are all me. 24 A. Okay. 25 Q. So let's get to June 2nd.</p>
<p>94</p> <p>1 appliances were in the room upstairs? 2 A. I don't recall. 3 Q. Do you know what electronics or appliances were in the 4 living room, or I think they called it the greater room 5 also? 6 (Mr. Moss reentered deposition room at 2:54 7 p.m.) 8 BY MR. FRANCO, CONTINUING: 9 Q. Do you know what was in there? 10 A. I don't -- specifically, I don't -- I don't recall. I 11 know we talked about it. I mean, it was your typical 12 television, elec -- you know, electronics type things. 13 (Mr. Moss exited deposition room at 2:54 14 p.m.) 15 BY MR. FRANCO, CONTINUING: 16 Q. Were there ceiling fans anywhere in the house? 17 A. I believe so. 18 Q. Do you know where? 19 A. I don't recall. 20 Q. Okay. The -- was the refrigerator taken from the scene 21 on June 2nd? 22 A. Yes. 23 Q. Okay. Who was in charge of collecting the evidence on 24 June 2nd? 25 A. Steve and I were with -- under Ryan's supervision. So,</p>	<p>96</p> <p>1 A. About the first one -- okay. 2 Q. Oh, here we go. 3 A. There you go. It seemed like it was like three items. 4 Q. Well, let me just hand it to you. This was previously 5 marked as Cottingham Exhibit No. 2, and I'll just turn 6 to the page that I believe is the one you're referring 7 to from the evidence list. Is that the June 2nd 8 evidence list? Or I might be wrong about that, I'm not 9 sure. 10 A. Well, it's labeled as the June 2nd. But see, it shows 11 all these grids. 12 Q. Show it to the -- okay. Yeah. 13 A. Those were all done -- we didn't do that that day. 14 Q. Okay. 15 A. So I don't know why it was labeled that way. 16 Q. Okay. But your recollection is that it was the fridge 17 and what else that was taken? 18 A. Essentially, it was the refrigerator, there was -- 19 there was various artifacts, you know, from our 20 excavation of the refrigerator. Primarily what we were 21 trying to do is at that point, there was some weather 22 heading in, we were running out of daylight. We wanted 23 to protect area -- the area of origin, you know, things 24 that were in the area of origin. 25 Q. Okay.</p>



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<p>97</p> <p>1 A. And then there was some discussion at that point as 2 to -- because I think, if you -- as I recall, Ryan was 3 representing Sears and, I think, Whirlpool. And so he 4 was making calls because I think at some point we 5 figured out it was LG, possibly, instead of Whirlpool. 6 So we were reluctant to take too much. 7 Q. Okay. Did Mr. Magee tell you who manufactured the 8 dishwasher? 9 A. I'm sure he did. I don't recall. 10 Q. Was the dishwasher manufacturer notified with respect 11 to the scene inspection on June 2nd? 12 A. I don't recall. 13 Q. Okay. You were mentioning -- mentioning other 14 artifacts that were taken. Were any other appliances 15 taken on the 2nd? 16 A. I don't -- I don't believe so. I -- like I said, the 17 thing I specifically remember is refrigerator, and then 18 some of the artifacts that we were -- as we were 19 excavating it. So in that -- in that proximity. I 20 don't -- we didn't really go -- we didn't go -- 21 everything -- I don't think we went any further. 22 Q. Okay. 23 A. That's my best recollection. If -- like I said, there 24 should be a list. 25 Q. Okay. The -- the -- the exhibit that I handed you,</p>	<p>99</p> <p>1 Mr. Magee, and he told you that it was built in 2004, 2 right? 3 A. Yes. 4 Q. Do you know what the floor in the living room and the 5 floor upstairs, what those floors were made out of? 6 A. Are you talking about the actual sub-flooring itself, 7 or, I mean -- 8 Q. No. 9 A. -- what are we talking about? 10 Q. Not the sub-floor, but the, whatever the flooring was 11 that was -- 12 A. The floor coverings? 13 Q. Right. 14 A. In the kitchen, we were able to see it was like a 15 linoleum. I don't recall specifically the rest of it, 16 whether, you know, carpet or hardwood. There was -- I 17 don't recall. 18 Q. Okay. You indicate in your report that Mr. Magee lived 19 by himself. That's something that he told you at the 20 scene that day? 21 A. Yes. 22 Q. Okay. Looking at, you know, page two of your report, 23 paragraph five there, it says Mr. Magee got up around 4 24 a.m. EDT, put some clothes in the dryer, took a shower, 25 got clothes from the dryer, put the dishes in the</p>
<p>98</p> <p>1 which I'll just hand it back to you, it's Cottingham 2 Exhibit 2. 3 A. Let me make sure I don't mix these up, use my notes 4 here still. Okay. 5 Q. It's Cottingham Exhibit 2. 6 A. There we go. 7 Q. Those were all the evidence lists that Mr. Cottingham 8 gave us. So I just -- I don't know if you can tell 9 from looking at it which one is pertaining to the day 10 that you were actually there. 11 A. The first one, the one on top here looks to me like -- 12 well, it talks about the refrigerator, back of the 13 refrigerator, and sifted debris, yes. 14 Q. Okay. Gotcha. 15 A. That's my recollection. 16 Q. Gotcha. There's three different dates on here and 17 that's why I was confused. 18 A. I understand. There's a date that it was actually -- 19 the date of loss, the date that it was actually 20 collected, and the date it was submitted. 21 Q. Okay. Gotcha. 22 A. I know it's -- it can be confusing, all these 23 documents, yes. 24 Q. All right. Now, with respect to your understanding of 25 the construction of the house, you learned that from</p>	<p>100</p> <p>1 dishwasher and started it before leaving about 4:25 2 a.m. EDT to go to McDonald's to get something to eat. 3 He turned off all the lights and he did not cook 4 anything that morning before leaving. Then later on it 5 says that Dan Meyer was driving up to the structure 6 about 5:30 a.m. EDT, and made entry through the dining 7 room door where he saw heavy smoke and flames in the 8 direction of the kitchen area. I just wanted to ask 9 you first about what Mr. Magee told you -- your 10 understanding was, based on what he told you, the 11 dishwasher was running when he left, right? 12 A. He turned it on before he left. 13 Q. And then about 5:30, you have -- strike that. 14 About 5:30 in the morning, your 15 understanding is that we have Dan Meyer seeing the 16 house on fire, right? 17 A. Right. 18 Q. Your report says that -- with respect to Dan Meyer, it 19 says he saw heavy smoke and flames in the direction of 20 the kitchen area. I just want to make sure I 21 understand. Is that referencing what he saw when he 22 says he opened that door? 23 A. Yeah. He stood there, basically was pointing in the 24 general direction and describing what he saw. 25 Q. Okay. Did he say anything else about where the flames</p>



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<p>101</p> <p>1 were coming from, or anything like that?</p> <p>2 A. No, not -- I mean, basically, he saw flame, you know,</p> <p>3 and heavy smoke, and he talked about turning on the</p> <p>4 lights. And just basically, his focus was on</p> <p>5 identifying whether anybody was trapped or within the</p> <p>6 structure.</p> <p>7 Q. Okay. And that's something that Mr. Meyer told you at</p> <p>8 the site when everyone was there?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. I'm going to ask you this question because I</p> <p>11 asked it of Mr. Cottingham. Does anything that Mr.</p> <p>12 Meyer said with respect to where he observed flames</p> <p>13 have any bearing on your opinion with respect to the</p> <p>14 actual origin of the fire?</p> <p>15 A. It's a data point. I mean, you know, it's -- I'm not</p> <p>16 sure how better to answer that.</p> <p>17 Q. Okay. I mean, where -- where Mr. Meyer observed flames</p> <p>18 doesn't affect your opinion that the origin of the fire</p> <p>19 was the fridge, does it?</p> <p>20 A. When you say doesn't affect, I mean, it's a data point</p> <p>21 that seemed to support what we were looking at.</p> <p>22 Q. What -- so what he says, it supported your -- your</p> <p>23 opinion with respect to the origin?</p> <p>24 A. Yeah. I didn't see any -- certainly didn't contradict</p> <p>25 it.</p>	<p>103</p> <p>1 and then the stuff that we just marked.</p> <p>2 A. I have a copy of it with me if you --</p> <p>3 Q. Yeah, that'd be great.</p> <p>4 A. I apologize if it's not in there. I don't know why it</p> <p>5 wouldn't.</p> <p>6 Q. It's okay. I was just wondering if it was in there or</p> <p>7 not. But is there anything that he said that you read</p> <p>8 in the transcript of the statement he gave that</p> <p>9 contradicts the opinion that the origin of the fire was</p> <p>10 the refrigerator?</p> <p>11 A. Nothing that I saw.</p> <p>12 Q. The fact that Mr. Meyer observed flames, says he</p> <p>13 observed flames coming out of the front -- strike that.</p> <p>14 The fact that Mr. Meyer said that he didn't</p> <p>15 see flames coming out of the two front kitchen windows</p> <p>16 when he was coming up the driveway, that doesn't affect</p> <p>17 your opinion.</p> <p>18 A. No.</p> <p>19 Q. Okay. If --</p> <p>20 A. Sorry, I don't mean to keep moving.</p> <p>21 VIDEO OPERATOR: Don't worry about it.</p> <p>22 BY MR. FRANCO, CONTINUING:</p> <p>23 Q. If the fire originated in the kitchen, and specifically</p> <p>24 originated in the fridge in the kitchen, and the</p> <p>25 witness, Mr. Meyer, is coming up the driveway, and</p>
<p>102</p> <p>1 Q. Did you ever listen to a recorded statement that he</p> <p>2 gave?</p> <p>3 MR. MOSS: You may have read a transcribed</p> <p>4 statement.</p> <p>5 THE WITNESS: Yeah. I just became aware of</p> <p>6 Ryan going back on his own without certainly my</p> <p>7 knowledge, I don't know who -- and Steve's knowledge,</p> <p>8 and getting a recorded statement of some sort. And I</p> <p>9 just saw the -- recently saw the transcript.</p> <p>10 BY MR. FRANCO, CONTINUING:</p> <p>11 Q. Okay.</p> <p>12 A. As in -- I think maybe a day or two ago.</p> <p>13 Q. Okay. I don't have a transcript. I just listened to</p> <p>14 the recording. So somebody must have typed it up,</p> <p>15 right, and given it to you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And did you ever listen to the actual recording?</p> <p>18 A. No, I have not been privy to that yet.</p> <p>19 Q. Okay. Did anything you read in the transcript of</p> <p>20 his -- strike that.</p> <p>21 Is the transcript you reviewed in your file</p> <p>22 here?</p> <p>23 A. Should be, if -- I think it's in there. I mean, it was</p> <p>24 certainly part of the -- it should be in there.</p> <p>25 Q. Okay. I didn't see it. All I saw was the photographs</p>	<p>104</p> <p>1 before he gets to the driveway, he saw flames coming</p> <p>2 off the roof?</p> <p>3 A. Uh-huh.</p> <p>4 Q. If the origin was in the fridge, wouldn't you expect</p> <p>5 the witness to see a well developed fire in the</p> <p>6 kitchen, and flames coming out of those front windows?</p> <p>7 A. Not necessarily.</p> <p>8 Q. Let's go to page 4, paragraph 4 of your report. It's</p> <p>9 that last paragraph before conclusions. It says the</p> <p>10 extreme extent of the fire damage and limited amount of</p> <p>11 inspection of this refrigerator during the June 2, 2010</p> <p>12 scene examination, prevented identification of a</p> <p>13 specific failure mode within this refrigerator at the</p> <p>14 time of this report. So I just want to say, ask you,</p> <p>15 based on what's in your report, you can't testify</p> <p>16 within any degree of engineering certainty as to what</p> <p>17 it was in the refrigerator that actually failed and</p> <p>18 caused the fire, can you?</p> <p>19 A. That's correct.</p> <p>20 Q. Paragraph two on the same page says some of the</p> <p>21 localized damage to this refrigerator was consistent</p> <p>22 with electrical activity, indicating that the initial</p> <p>23 fire occurred inside the refrigerator. Do you have any</p> <p>24 pictures of that you can show me?</p> <p>25 A. Okay. You paraphrased that, right?</p>



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<p>105</p> <p>1 Q. Oh, did I?</p> <p>2 A. Yeah, but that's all right.</p> <p>3 Q. Hang on.</p> <p>4 A. I think you covered the intent, but --</p> <p>5 Q. I didn't think I did. I didn't mean to paraphrase, but</p> <p>6 is that generally what -- what that says right there?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So do you have pictures that show this localized</p> <p>9 damage that you're referring to?</p> <p>10 A. I'm sure there are in my -- well, photographs.</p> <p>11 Q. Are they -- are there any that are attached to your</p> <p>12 report?</p> <p>13 A. I don't -- I don't recall. I'd have to look.</p> <p>14 Q. All right. Before we look at the pictures, what is it</p> <p>15 about this localized damage that you're seeing that</p> <p>16 leads you to believe there was electrical activity?</p> <p>17 A. We excavated some conductors from within the</p> <p>18 refrigerator itself, and then -- and in the area, close</p> <p>19 proximity to it with -- that exhibited some beading and</p> <p>20 notching consistent with electrical activity.</p> <p>21 Q. You saw these conductors at the scene on June 2nd?</p> <p>22 A. Yes.</p> <p>23 Q. And other than the conductors, was there something else</p> <p>24 that you were referring to when it says in that</p> <p>25 paragraph two that there was some of the localized</p>	<p>107</p> <p>1 Q. But the fact of the matter is that you have a fridge</p> <p>2 that went from six feet level to 16 inches, and that in</p> <p>3 and of itself supports your opinion, right?</p> <p>4 A. Yes, lot of heat.</p> <p>5 Q. But the connection to electrical activity was the</p> <p>6 conductors that were found at the site on June 2nd?</p> <p>7 A. Primarily. I mean, I -- yes.</p> <p>8 Q. All right. And the basis for your opinion, this is</p> <p>9 based on your visual observation of the refrigerator at</p> <p>10 the site on June 2nd?</p> <p>11 A. Yes.</p> <p>12 Q. And also your visual observation of the conductors,</p> <p>13 right?</p> <p>14 A. All the artifact -- yes, the artifacts at the scene</p> <p>15 when I was there June 2nd.</p> <p>16 Q. All right. Look at page three, paragraph four. Toward</p> <p>17 the bottom of paragraph four, it says electrical</p> <p>18 conductor and component fragments consistent with those</p> <p>19 used in this type of refrigerator were found in and</p> <p>20 around this refrigerator. A few of these fragments</p> <p>21 exhibited damage consistent with electrical activity.</p> <p>22 I guess I just want to ask you first, is that the same</p> <p>23 electrical conductors that you're referencing also on</p> <p>24 page --</p> <p>25 A. Yes.</p>
<p>106</p> <p>1 damage to the refrigerator consistent with electrical</p> <p>2 activity? Is there something else in addition to that?</p> <p>3 A. Yeah. When you look at the condition of the steel</p> <p>4 remnants of the refrigerator, there were -- there were</p> <p>5 multiple perforations. Steel doesn't generally burn in</p> <p>6 a fire.</p> <p>7 Q. When you say multiple perforations, what part of the</p> <p>8 refrigerator, if you can tell, are you talking about</p> <p>9 where you saw the perforations?</p> <p>10 A. In the structural steel. You know, as far as -- a lot</p> <p>11 of it was -- I mean, I don't know that I recall</p> <p>12 specifically which parts. I mean, this refrigerator</p> <p>13 was reduced from, you know, close to six feet tall down</p> <p>14 to the highest point was 16 inches, so --</p> <p>15 Q. Lot of damage, correct?</p> <p>16 A. It was most I've ever seen. It was amazing.</p> <p>17 Q. Okay. So -- well, let me get to that. I mean, the</p> <p>18 fact that it went from around six feet tall, down to</p> <p>19 like 16 inches, that's obviously substantial fire</p> <p>20 damage, right? I mean --</p> <p>21 A. Yes.</p> <p>22 Q. -- pretty substantial? So when you're talking about</p> <p>23 multiple perforations, as we sit here, you could</p> <p>24 probably find pictures and show me this?</p> <p>25 A. Sure.</p>	<p>108</p> <p>1 Q. Page four?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Now, when you were gathering the</p> <p>4 refrigerator on June 2nd, there were other items that</p> <p>5 were found within the fridge that didn't belong in the</p> <p>6 fridge, right?</p> <p>7 A. I don't specifically recall that.</p> <p>8 Q. Did -- did you -- strike that.</p> <p>9 When you inspected the remnants of the</p> <p>10 refrigerator at the site, do you recall ever seeing</p> <p>11 other remnants, artifacts that did not belong in the</p> <p>12 fridge?</p> <p>13 A. Well, I mean, surely, you've got some structural things</p> <p>14 that fall down from the fire. Is there anything</p> <p>15 specifically you're looking for?</p> <p>16 Q. Anything at all that you might have found?</p> <p>17 A. Oh, sure. I mean, there's -- I mean, when you have a</p> <p>18 fire like that, you've got things raining down.</p> <p>19 Q. Okay.</p> <p>20 A. What was extremely interesting is is there wasn't like</p> <p>21 a big weight or anything sitting on top of it that</p> <p>22 looked like it crushed it.</p> <p>23 Q. Okay. So, again, just -- I'm sorry to jump around</p> <p>24 because I see it in two parts of the report. Back on</p> <p>25 page four where you're talking about the localized</p>



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<p>109</p> <p>1 damage, when you're talking about the actual structure</p> <p>2 of the fridge, is there a particular part, you know,</p> <p>3 local part that you're talking about, or is that</p> <p>4 just -- when you -- I'm not sure what you mean by that,</p> <p>5 localized damage. Is that a specific area of the</p> <p>6 fridge you're referring to, or are you just saying that</p> <p>7 it's local to the whole fridge? I'm not sure.</p> <p>8 A. There was areas within the refrigerator that were more</p> <p>9 damaged than others.</p> <p>10 Q. Okay. And that -- in what particular areas would you</p> <p>11 say of the fridge were more damaged than others?</p> <p>12 A. Basically, with the perforations that I was seeing in</p> <p>13 the structural steel.</p> <p>14 Q. So if we imagine the fridge in front of us, and now</p> <p>15 it's down to 16 inches, right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. After the fire, the perforations you observed would be</p> <p>18 on what parts of the structural steel are you talking</p> <p>19 about?</p> <p>20 A. I mean, if you're talking about structural steel for a</p> <p>21 refrigerator, you've got the steel shell, then you've</p> <p>22 got some structural components within that steel shell</p> <p>23 that support different load carrying members in the</p> <p>24 refrigerator. I mean, you know, obviously, you have</p> <p>25 doors and shelves and things like that that are going</p>	<p>111</p> <p>1 Q. Is that a determination that you can make?</p> <p>2 A. I mean, again, they're consistent with it.</p> <p>3 Q. I understand that. But my -- my question is more</p> <p>4 specific. Are you able to say with a reasonable degree</p> <p>5 of engineering certainty that those conductors that you</p> <p>6 found belonged to the fridge?</p> <p>7 A. I mean, yeah, there's nothing that led me to believe</p> <p>8 otherwise.</p> <p>9 Q. Okay. And you hold that opinion to a reasonable degree</p> <p>10 of engineering certainty?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Yes?</p> <p>13 A. Yes.</p> <p>14 Q. Sorry.</p> <p>15 A. I'm sorry.</p> <p>16 Q. No, that's all right. Okay. And that's based on</p> <p>17 your -- again, your visual observation of the</p> <p>18 conductors at the site, right?</p> <p>19 A. Yes.</p> <p>20 Q. Pretty much you agree that the -- pretty much the whole</p> <p>21 house burned to the ground, with the exception of part</p> <p>22 of the garage, right?</p> <p>23 A. Well, I mean, the house was heavily damaged by fire.</p> <p>24 Let's put it that way.</p> <p>25 Q. Okay. I mean, everything that was in the kitchen</p>
<p>110</p> <p>1 on. And typically, a refrigerator like this has a</p> <p>2 plastic polymer liner that's blown -- or actually, it's</p> <p>3 vacuum formed.</p> <p>4 Q. Okay. I think -- well, let me ask you this. Because</p> <p>5 you told us that you can't testify with any engineering</p> <p>6 certainty as to what it was that actually failed in the</p> <p>7 fridge, is it still -- is it true that you also can't</p> <p>8 tell us with any degree of engineering certainty that</p> <p>9 the conductors that were found actually belonged to the</p> <p>10 refrigerator?</p> <p>11 A. Without further analysis. I mean, you know, I got --</p> <p>12 some of them definitely came from the refrigerator. I</p> <p>13 mean, they were consistent with loads, and would be</p> <p>14 used to construct a refrigerator like that. And there</p> <p>15 wasn't anything else that I found in and around it that</p> <p>16 would have had those same conductors in it.</p> <p>17 Q. Okay. But can you make that determination without</p> <p>18 further analysis?</p> <p>19 A. Just for the record, what determination are we talking?</p> <p>20 Just to make sure we're clear.</p> <p>21 Q. Okay. That the conductors that you found at the site</p> <p>22 on June 2nd, 2010, as having these electrical activity,</p> <p>23 that those conductors actually belonged to the subject</p> <p>24 refrigerator?</p> <p>25 A. Okay. And the question is?</p>	<p>112</p> <p>1 before the fire occurred ended up in the basement after</p> <p>2 the fire occurred?</p> <p>3 A. Well, parts of it did.</p> <p>4 Q. Okay.</p> <p>5 A. I mean, certainly not everything. In fact, the vast</p> <p>6 majority was on the sub -- was on the crawl space.</p> <p>7 Q. Okay. What parts of the kitchen were remaining up on</p> <p>8 the first floor after the fire?</p> <p>9 A. Essentially everything except for the dishwasher. You</p> <p>10 know, the dishwasher and that counter area was</p> <p>11 overhanging the basement. That went down. But the</p> <p>12 rest of it was above the crawl space, and remained in</p> <p>13 the crawl space area.</p> <p>14 Q. Okay. I forgot to ask you this. The conductors that</p> <p>15 you found at the site, did you take pictures of them at</p> <p>16 the site?</p> <p>17 A. I did.</p> <p>18 Q. Are those attached to your report?</p> <p>19 A. I don't know if specifically the report. They're</p> <p>20 certainly part of my bulk photographs.</p> <p>21 Q. Well, before we look for those also, why don't you tell</p> <p>22 me what it is that you observed specifically on the</p> <p>23 conductors that led you to believe that there was</p> <p>24 electrical activity?</p> <p>25 A. Beading, notching, just isolated damage.</p>



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<p>113</p> <p>1 Q. Okay. And do you have an opinion as to what caused the</p> <p>2 electrical activity that was observed on those</p> <p>3 conductors that you found?</p> <p>4 A. Most electrical activity is caused by as a result of</p> <p>5 the fire. So basically the fire impairs the insulation</p> <p>6 and the isolation of the -- of electrical components</p> <p>7 and allows them to come in contact with each other and</p> <p>8 with other conducting surfaces.</p> <p>9 Q. Okay. I'm glad you said that because that leads me to</p> <p>10 believe that I was confused about your opinion. Are</p> <p>11 you saying that the electrical activity, or the</p> <p>12 evidence of the electrical activity that you observed</p> <p>13 on the conductors that you saw at the site you believe</p> <p>14 was actually caused by the fire?</p> <p>15 A. I didn't say that necessarily, but could well have</p> <p>16 been. And what I'll tell you is that's usually the</p> <p>17 case.</p> <p>18 Q. Okay.</p> <p>19 A. But --</p> <p>20 Q. I mean, that's nothing unusual in a fire at some other</p> <p>21 house, let's say, and all the appliances get burned in</p> <p>22 the house, and you would expect to see evidence of</p> <p>23 electrical activity on those wires, right?</p> <p>24 A. Which we did.</p> <p>25 Q. Correct.</p>	<p>115</p> <p>1 controls analog.</p> <p>2 Q. Okay. And I was asking you if you could tell us within</p> <p>3 a reasonable degree of engineering certainty what</p> <p>4 component of the refrigerator, the conductors you found</p> <p>5 belonged to -- correct me if I'm wrong but I thought</p> <p>6 you said the controls area, is that --</p> <p>7 A. I was talk -- I was referring to some of the solid</p> <p>8 state controls.</p> <p>9 Q. Okay. And on this model refrigerator, where would that</p> <p>10 be?</p> <p>11 A. Above the compressor.</p> <p>12 Q. Okay.</p> <p>13 A. Okay. Above the compressor compartments.</p> <p>14 Q. All right. Would you -- do you -- did you take a</p> <p>15 picture of the -- I think I asked you this, you said</p> <p>16 you did take a picture of the wires, the conductors,</p> <p>17 the beading and the notching, that stuff. Would you</p> <p>18 mind pulling that up for me?</p> <p>19 A. You want to start at the beginning, or do you just want</p> <p>20 me to pull up some general ones? Because I've got some</p> <p>21 ones that are real easy to see first.</p> <p>22 Q. The ones you took at the site that showed you.</p> <p>23 A. Well, I mean, I took a bunch of photographs at the</p> <p>24 site. I can show you some of the conductors -- I mean,</p> <p>25 the ones that jump out at me right away just from</p>
<p>114</p> <p>1 A. Right.</p> <p>2 Q. Okay. Now, you've told us that it was your opinion</p> <p>3 that the conductors that you found belonged to the</p> <p>4 refrigerator. Can you tell me within a reasonable</p> <p>5 degree of engineering certainty what part of the</p> <p>6 refrigerator those conductors belonged to?</p> <p>7 A. Some of them were certainly from the controls area.</p> <p>8 Q. And what led you to believe that?</p> <p>9 A. Parts of the controls were still there.</p> <p>10 Q. I'm sorry, I guess --</p> <p>11 A. Like, for instance, like a toroidal transformer. I</p> <p>12 mean, things that you would expect to be in the control</p> <p>13 circuitry for that refrigerator.</p> <p>14 Q. Okay. When you were at the site on June 2nd, did you</p> <p>15 physically inspect that controls area?</p> <p>16 A. I mean, again, well, there's -- but the -- when you say</p> <p>17 controls area, I'm not exactly sure what you're</p> <p>18 referring to.</p> <p>19 Q. Well, what were you referring to when you said the</p> <p>20 controls area?</p> <p>21 A. Well, what I'm referring to is, is in -- in the</p> <p>22 refrigerator, there's going to be controls.</p> <p>23 Q. Right.</p> <p>24 A. And this particular one has solid state controls as</p> <p>25 well as the compressor -- the traditional compressor</p>	<p>116</p> <p>1 looking at the -- the collage I have around the screen.</p> <p>2 Q. Well, I -- maybe I asked -- I forgot to ask you this,</p> <p>3 before we dig into the photos, were there a lot of</p> <p>4 conductors that you found within the fridge?</p> <p>5 A. I won't say a lot of conductors that I found that</p> <p>6 you're going to be referring to. There were a lot of</p> <p>7 pictures of conductors.</p> <p>8 Q. Okay. I'm -- what I -- I want you to see if you can</p> <p>9 find pictures that you took of the conductors that you</p> <p>10 believed to be part of or belong to the refrigerator.</p> <p>11 So I guess I know you took lots of pictures of</p> <p>12 conductors. Do all of those belong to the</p> <p>13 refrigerator?</p> <p>14 A. I would -- without going through every one, one by one</p> <p>15 by one, I believe so but I'm not totally certain. I</p> <p>16 mean, I'm sure I took pictures. Well, let's put it to</p> <p>17 you this way. To answer your question, I took a</p> <p>18 picture of a lot of conductors with -- throughout that</p> <p>19 structure, okay? So there's a lot of pictures in here.</p> <p>20 The ones you're -- I think you're referring to</p> <p>21 specifically are from the refrigerator?</p> <p>22 Q. Right.</p> <p>23 A. There are pictures of those in here.</p> <p>24 Q. Okay. Can I see those? Or actually, before we do,</p> <p>25 just reference the JPEG number for me, if you could?</p>



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<p>117</p> <p>1 A. I'll have to pull them up and go through them. I mean,</p> <p>2 like I said, I can start with ones that jump out at me</p> <p>3 because they have a blue background from where --</p> <p>4 taking them -- picture on a --</p> <p>5 Q. On a mat board?</p> <p>6 A. On a mat board.</p> <p>7 Q. Okay.</p> <p>8 A. So --</p> <p>9 Q. But before we do that, let me just ask you this. I</p> <p>10 think you said you just -- you took a lot of them. But</p> <p>11 again, I'm referencing only the ones that you believe</p> <p>12 were part of the actual refrigerator. And so is</p> <p>13 there -- of the ones that you believe that are part of</p> <p>14 the refrigerator, are you saying that all of those are</p> <p>15 the ones that you're referencing in the report? Or is</p> <p>16 there particular ones you're referencing in this</p> <p>17 report?</p> <p>18 A. There's no particular ones. I mean --</p> <p>19 Q. Gotcha.</p> <p>20 A. -- if you look through here, you'll see what I -- as we</p> <p>21 were going -- working the scene, I took a lot of</p> <p>22 pictures of the refrigerator, its position in the -- in</p> <p>23 the structure, a lot of the other appliances that are</p> <p>24 there. And then as we started excavating we took more</p> <p>25 and more close-ups, more and more pictures of what we</p>	<p>119</p> <p>1 through, I think, 508.</p> <p>2 Q. Okay. Can I see just them.</p> <p>3 A. Sure, I'm sorry.</p> <p>4 Q. Just real quick, just so I just know what I'm looking</p> <p>5 at here. Gotcha.</p> <p>6 A. That's a good overview of the two where they had the</p> <p>7 spade lock connectors and the spade still in them.</p> <p>8 Q. Okay, great. And then so again, back to what we were</p> <p>9 discussing earlier, the fact that you saw evidence of</p> <p>10 electrical activity on those particular wires in that</p> <p>11 JPEG 241, that's not unusual, right? Is it?</p> <p>12 A. No.</p> <p>13 Q. I mean, does the fact that you observed electrical</p> <p>14 activity on various conductors that were found within</p> <p>15 the fridge tell you what it was in the fridge that</p> <p>16 failed?</p> <p>17 A. No.</p> <p>18 Q. Okay, gotcha. All right. Let's go to page four of</p> <p>19 your report, and let me just ask you, you've got two</p> <p>20 conclusions here being given within a reasonable degree</p> <p>21 of engineering certainty. And it says, number one is,</p> <p>22 the fire loss was caused by a fire within the involved</p> <p>23 Sears Kenmore Elite brand Trio refrigerator. And</p> <p>24 number two is, this failure resulted in the ignition</p> <p>25 and consumption of the combustible internal components</p>
<p>118</p> <p>1 were findings, where we were finding it, so we had good</p> <p>2 documentation.</p> <p>3 Q. Okay. I -- what -- I understand a lot more now just</p> <p>4 based on what you just told me. So, okay, that's part</p> <p>5 of this process.</p> <p>6 A. Not a problem.</p> <p>7 Q. Okay. So, yeah, just show me the one that stands out</p> <p>8 first, so you don't have to dig through a million</p> <p>9 pictures.</p> <p>10 A. Okay. And when I say stand out, I mean they're -- they</p> <p>11 have this bright blue background where I can just see,</p> <p>12 you know what I'm saying.</p> <p>13 Q. Right, perfect.</p> <p>14 A. Where we actually laid them on that. You want to --</p> <p>15 Q. Just one example of one that you saw at the site, took</p> <p>16 a picture of, and that you believe belonged to the</p> <p>17 actual refrigerator?</p> <p>18 A. Okay. Say number 241 --</p> <p>19 Q. Okay.</p> <p>20 A. -- shows two conductors.</p> <p>21 Q. And the JPEG reference 241, is that to the bulk photos</p> <p>22 that you produced?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Can you just flip through your --</p> <p>25 A. Yeah. All my -- all my photographs are numbered 1</p>	<p>120</p> <p>1 of this refrigerator. And that's your opinions in this</p> <p>2 case, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Mr. Cottingham said in his report and at his</p> <p>5 deposition that he -- the origin of the fire was low</p> <p>6 and internal to the refrigerator. And I assume that's</p> <p>7 something you agree with, right?</p> <p>8 A. The origin?</p> <p>9 Q. Right.</p> <p>10 A. It was certainly internal, and -- and the fire was low.</p> <p>11 I'm not sure exactly -- you know, what low -- low is</p> <p>12 one of those --</p> <p>13 Q. Right. No, I --</p> <p>14 A. -- vague terms, okay. But --</p> <p>15 Q. I mean, you don't disagree with him on that though, do</p> <p>16 you?</p> <p>17 A. No.</p> <p>18 Q. Okay. Okay. Let's go to page three, paragraph three,</p> <p>19 and let me just ask you a quick question about</p> <p>20 something that Bill Magee told you. It says in</p> <p>21 paragraph three, towards the bottom of the paragraph,</p> <p>22 Mr. Magee provided documentation that identified the --</p> <p>23 strike that.</p> <p>24 Well, I don't know where I found where he</p> <p>25 said that, but let me just ask you this. Didn't Mr.</p>



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<p>121</p> <p>1 Magee tell you that he purchased one fridge at one</p> <p>2 point, and then it was a warranty, and they sent it</p> <p>3 back and got a new one?</p> <p>4 A. Well, he purchased one, it failed.</p> <p>5 Q. Right.</p> <p>6 A. I think within a year or so. I don't remember or</p> <p>7 recall the time period. And then this was a</p> <p>8 replacement for it.</p> <p>9 Q. Okay. I mean, that's what I wanted to ask you about.</p> <p>10 Does the fact that that first fridge failed in some</p> <p>11 way, does that have any bearing on your opinions with</p> <p>12 respect as to --</p> <p>13 A. No.</p> <p>14 Q. -- why this fridge in this case failed?</p> <p>15 A. No.</p> <p>16 Q. Okay. And by the way, do you know what it was that</p> <p>17 failed?</p> <p>18 A. I think he said something about a compressor or</p> <p>19 something.</p> <p>20 Q. Okay. Now, same page three, paragraph three, the first</p> <p>21 sentence. Examination of the structure revealed heavy</p> <p>22 fire damage and collapse with the extreme localized</p> <p>23 damage in the area of the kitchen refrigerator. Then</p> <p>24 you referenced photos 1 through 07?</p> <p>25 A. Uh-huh. Yes, I'm sorry.</p>	<p>123</p> <p>1 below, right?</p> <p>2 A. Okay.</p> <p>3 Q. I don't know if it was crawl space or what it was. But</p> <p>4 it was not the same level as the kitchen floor --</p> <p>5 A. Okay.</p> <p>6 Q. -- right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So I guess what I'm wondering is if everything</p> <p>9 is on the floor, and there's no kitchen floor to</p> <p>10 actually look at, what is the localized damage you're</p> <p>11 referring to?</p> <p>12 A. You look at layering.</p> <p>13 Q. Okay.</p> <p>14 A. The other appliances were sitting on things that had</p> <p>15 burned and fallen down before they fell down.</p> <p>16 Q. Okay. And on June 2nd, 2010, when you were at the</p> <p>17 scene, did you know what was underneath the washing --</p> <p>18 or dishwasher at the time?</p> <p>19 A. I'm not sure I understand your question.</p> <p>20 Q. You were saying that there was layering underneath the</p> <p>21 floors, right?</p> <p>22 A. Well, the dishwasher's in the basement. So it was on</p> <p>23 top of -- I can show -- we can go through my pictures</p> <p>24 if you want to see what it was sitting on top of.</p> <p>25 Q. I guess, so what layering were you referring to? I'm</p>
<p>122</p> <p>1 Q. All right. Now, is that a -- your independent opinion,</p> <p>2 or is that an opinion that you're relying on Mr.</p> <p>3 Cottingham for?</p> <p>4 A. No, that's --</p> <p>5 Q. That's your opinion?</p> <p>6 A. Yes.</p> <p>7 (Mr. Moss exited deposition room at 3:35</p> <p>8 p.m.)</p> <p>9 BY MR. FRANCO, CONTINUING:</p> <p>10 Q. Now, so what is the localized damage you're referring</p> <p>11 to in the area of the fridge? What specifically are</p> <p>12 you looking at when you see that?</p> <p>13 A. Summarizing more than anything else. The refrigerator</p> <p>14 was actually sitting on the gravel in the crawl space.</p> <p>15 So when you look at -- if you look at the overall</p> <p>16 damage to the structure, and then you look at where the</p> <p>17 refrigerator is at, you could see it burnt hot and</p> <p>18 early.</p> <p>19 Q. Okay. Now, all the appliances ended up down below,</p> <p>20 right? After the fire?</p> <p>21 A. Well, when you say down below, I'm not sure what you</p> <p>22 mean.</p> <p>23 Q. The kitchen floor was basically gone, right? And then</p> <p>24 some ended up in the -- some of the stuff ended up in</p> <p>25 the crawl space, and some ended up somewhere else down</p>	<p>124</p> <p>1 not --</p> <p>2 A. Well, you were asking about localized damage.</p> <p>3 Q. Right.</p> <p>4 A. And so I was primarily focused on the layering that</p> <p>5 was of the refrigerator versus the items that are</p> <p>6 around it, the appliances that are around it.</p> <p>7 Q. I guess help me understand that. What do you mean by</p> <p>8 the layering? The layering of the floor, or what was</p> <p>9 underneath there?</p> <p>10 A. The layer of debris.</p> <p>11 Q. Gotcha.</p> <p>12 A. See, what you -- what -- 'cause -- you -- the layer,</p> <p>13 basically, when you look at -- it's kind of like</p> <p>14 excavating in a geological -- as you uncover layers,</p> <p>15 you can see what's happening earlier and earlier and</p> <p>16 earlier in the fire.</p> <p>17 Q. Gotcha. So you're saying --</p> <p>18 A. Because those things fall first.</p> <p>19 Q. I got it. So like a -- like an archeology dig?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So that's the layering you're talking about?</p> <p>22 A. That's the layering I'm talking about.</p> <p>23 Q. Okay. And so are you saying that the layering --</p> <p>24 strike that.</p> <p>25 Let me just look at it here. So the first</p>



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<p>1 sentence in paragraph three, examination of the 2 structure revealed heavy fire damage. So what you're 3 saying, and correct me if I'm wrong, but you're 4 basically saying that at least in that part of the 5 kitchen, the floor is heavily damaged. So you've got a 6 lot of stuff collapsing, but the localized damage that 7 you're referring to is the layering that you observed 8 underneath the refrigerator?</p> <p>9 A. Yeah. The position and -- of the refrigerator and what 10 was underneath it and around it.</p> <p>11 Q. Okay. And what was it about the position that was 12 unique to the refrigerator, as opposed to some other 13 appliance that was down in the space below?</p> <p>14 A. It went through the floor quick and early, because, I 15 mean, like I said, and there was actually an area of 16 exposed gravel. I mean, there was nothing between the 17 refrigerator and the gravel sub-scraps -- substrate 18 that was in that crawl space.</p> <p>19 Q. And I guess what you're saying is that with respect to 20 the other appliances, like the dishwasher, did you find 21 materials between the dishwasher and --</p> <p>22 (Mr. Moss reentered deposition room at 3:39 23 p.m.)</p> <p>24 THE WITNESS: Well, understand, the 25 dishwasher fell into the basement, and it fell in on</p>	<p>125</p> <p>1 Q. We just need to get more stickers here.</p> <p>2 A. Okay.</p> <p>3 COURT REPORTER: If you just want to put a 4 number on this, and then we'll fill in the particulars 5 when we break.</p> <p>6 MR. FRANCO: Okay.</p> <p>7 COURT REPORTER: The last one we marked was 8 7.</p> <p>9 (Exhibit No. 8 marked)</p> <p>10 BY MR. FRANCO, CONTINUING:</p> <p>11 Q. Okay. I'm marking <u>Exhibit No. 8</u>, which is Exhibit 1 to 12 your report consisting of pages 1 through 27 of the 13 photographs attached -- attached to the report.</p> <p>14 A. So that's Exhibit -- this is Exhibit 1 in its entirety 15 then?</p> <p>16 Q. Yes.</p> <p>17 A. Okay.</p> <p>18 Q. I believe it is. But when you just referenced just now 19 JPEG number 26, is that the photograph on page 16?</p> <p>20 A. On page 16?</p> <p>21 Q. Yep, 16 of 27?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. Oh, yeah. Page 16 of 27 shows the lower front door of 25 the refrigerator, and then the area where the -- the</p>
<p>126</p> <p>1 top of other things that were burnt down there. So -- 2 so you could tell from a timing stand -- you know, 3 basic -- I shouldn't say -- it fell on top of other 4 things that were in the basement, and then they ended 5 up ultimately being burned.</p> <p>6 BY MR. FRANCO, CONTINUING:</p> <p>7 Q. Okay. While you get your photos up, can you pull up 8 one of the fridge that shows the perforations we talked 9 about?</p> <p>10 A. Twenty-six kind of shows you a good overview.</p> <p>11 Q. Is that part of your report, or is that --</p> <p>12 A. I don't recall which -- by number which photographs I 13 put in my report. If you want to go through the report 14 photos --</p> <p>15 Q. Yeah.</p> <p>16 A. -- we could -- we could do that.</p> <p>17 Q. Actually, turn to page --</p> <p>18 A. You want to do that?</p> <p>19 Q. Yeah. Turn to page 16 of 27.</p> <p>20 A. Do you have a -- let me -- I'm going to need a report 21 with --</p> <p>22 Q. Oh. Here, I'll mark that.</p> <p>23 A. I prefer to use the one with the exhibit, yeah.</p> <p>24 Q. Let's --</p> <p>25 A. This is the report. Are you going to --</p>	<p>128</p> <p>1 area in front of the refrigerator after we lifted up 2 the door.</p> <p>3 Q. Okay, all right. Because it says photograph 26. 4 That's why I was asking. That's all.</p> <p>5 A. Yeah. Well, basically of the --</p> <p>6 Q. Of the report, not --</p> <p>7 A. Exhibit, I'm sorry.</p> <p>8 Q. Got it, gotcha.</p> <p>9 A. Now I understand --</p> <p>10 Q. That's okay.</p> <p>11 A. -- what you're trying to.</p> <p>12 Q. That's okay.</p> <p>13 A. These -- the numbers in the report do not correspond to 14 the bulk photograph numbers.</p> <p>15 Q. Okay. So let me take a quick look at photo 26 on your 16 laptop, JPEG 26, I should say.</p> <p>17 A. Okay. Let me get back to it again here. Okay.</p> <p>18 Q. And if you'd just pull that around, I'd appreciate it. 19 Great.</p> <p>20 A. Trying to give you a perspective.</p> <p>21 Q. Yeah. And so the perforations, can you help me 22 understand what I'm looking at here, what you see?</p> <p>23 A. Well, I'd have to go back to -- there's other 24 photographs in here. But, I mean, you'll -- if you 25 look in here, you'll see, you know, a lot of</p>



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<p>1 perforations in the steel structure that's left.</p> <p>2 Q. That I can see on photograph 26?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And maybe just help me, point it out on that</p> <p>5 screen and I'll just -- just so I understand what</p> <p>6 you're talking about.</p> <p>7 A. Okay. I mean, if you're looking at the refrigerator</p> <p>8 here, you'll see a -- I mean, little holes throughout</p> <p>9 the --</p> <p>10 Q. Okay. And are we looking -- what part are we looking</p> <p>11 at, if you know? If you know?</p> <p>12 A. That's -- I mean, when you say what part are we looking</p> <p>13 at, we're looking at basically -- if you're looking at</p> <p>14 this picture.</p> <p>15 Q. Yeah.</p> <p>16 A. Underneath here is the compressor area.</p> <p>17 Q. Okay.</p> <p>18 A. So you've got a metal enclosed compartment down there.</p> <p>19 And then on top of that you have the rest -- basically</p> <p>20 what used to be the rest of the refrigerator. So, you</p> <p>21 know, the two -- it's going to be the refrigerator box,</p> <p>22 both the freezer area and the two refrigerator.</p> <p>23 Q. Okay. And that's --</p> <p>24 A. And so this is -- primarily what you're seeing here is</p> <p>25 the sheet metal enclosure for -- for that. What's the</p>	<p>1 Q. No. Page three, paragraph three.</p> <p>2 A. Which I think is -- starts with examination of</p> <p>3 structure yield heavy --</p> <p>4 Q. Localized damage, right.</p> <p>5 A. The photographs -- yeah. What I'm showing there is is</p> <p>6 I'm referring to one through seven, basically.</p> <p>7 Q. Oh, there we go. Okay. One through seven of the</p> <p>8 report, right? Okay.</p> <p>9 A. Of the photo exhibit for the report, yes.</p> <p>10 Q. Right, gotcha. And looking at photo seven, is that in</p> <p>11 particular what you're referring to?</p> <p>12 A. I mean, that's one of them, one of the seven. What I</p> <p>13 -- what I was trying to do there is give you a</p> <p>14 perspective. Overall view, and then kind of come into</p> <p>15 the refrigerator and then back out again, so you could</p> <p>16 see just in general the level of destruction around the</p> <p>17 refrigerator versus other areas.</p> <p>18 Q. Well, so looking at photo seven, based on what you just</p> <p>19 said, this area is depicting the area of damage around</p> <p>20 the refrigerator, and you're trying to show in relation</p> <p>21 to other areas that aren't as damaged, right?</p> <p>22 A. Right. And this -- actually this area is, yeah, behind</p> <p>23 the refrigerator. But, yes.</p> <p>24 Q. Okay. So which areas in this picture are not as</p> <p>25 damaged as the area --</p>
<p>1 remnants of it.</p> <p>2 Q. And those -- what you're talking about is that sort of</p> <p>3 like a holding steel at the perforations --</p> <p>4 perforations?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Yes?</p> <p>7 A. Yes.</p> <p>8 Q. I'm sorry, she's --</p> <p>9 A. No, you're -- no, I appreciate that.</p> <p>10 Q. Okay.</p> <p>11 A. Fall into bad habits sometimes.</p> <p>12 Q. Attached to your report now, those -- I think it's</p> <p>13 <u>Exhibit 8</u>.</p> <p>14 A. Yes.</p> <p>15 Q. It's <u>Exhibit 8</u> from today, Exhibit 1 from --</p> <p>16 A. Of the report, right.</p> <p>17 Q. Are there pictures attached that show the -- what you</p> <p>18 referenced on page three, paragraph three, heavy fire</p> <p>19 damage and collapse of -- in the localized area of the</p> <p>20 kitchen refrigerator? The layering that we talked</p> <p>21 about? All that stuff? Is that --</p> <p>22 A. If you could help me, where are you reading that at?</p> <p>23 Is this -- is this basically the first paragraph, the</p> <p>24 first sentence of the first paragraph under</p> <p>25 observations and evaluations?</p>	<p>1 A. If you look at -- five is the one I was showing you, or</p> <p>2 was consistent with the one I was showing you earlier.</p> <p>3 Q. Okay.</p> <p>4 A. If you see how basically the refrigerator is buried</p> <p>5 under all the debris.</p> <p>6 Q. Okay.</p> <p>7 A. And -- and the bottom door is found face down in front</p> <p>8 of it under the debris. And then what was under -- or</p> <p>9 you look at what's underneath it. Like I said, that's</p> <p>10 where we saw the bare gravel. You could see that --</p> <p>11 you know, everything was consumed in that area.</p> <p>12 Q. Okay.</p> <p>13 A. All -- all the combustibles, or the vast majority of</p> <p>14 combustibles were consumed in that area. And this was</p> <p>15 sitting directly on the crawl space, the gravel crawl</p> <p>16 space.</p> <p>17 Q. Okay. And but in relation to the other parts that were</p> <p>18 not as damaged?</p> <p>19 A. Yeah. If you -- if you go back to some of the bigger</p> <p>20 -- like if you look at photo four.</p> <p>21 Q. Okay.</p> <p>22 A. You'll see it's sitting there. And then you look to</p> <p>23 the right and you'll see a lot of the framing structure</p> <p>24 still intact. So you're looking down into the</p> <p>25 basement, finished basement area. And you're also</p>



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<p>1 looking towards the -- you know, the side of the house.</p> <p>2 Q. What's that wall to the right of where the fridge is?</p> <p>3 Do you see that?</p> <p>4 A. The concrete wall?</p> <p>5 Q. Yeah.</p> <p>6 A. That's -- that's basically the foundation wall that's</p> <p>7 running -- it also forms -- it divides the basement</p> <p>8 from the crawl space.</p> <p>9 Q. Okay. And then in photograph four, to the right of</p> <p>10 that wall would be -- at least down below would be the</p> <p>11 basement, right?</p> <p>12 A. Correct.</p> <p>13 Q. What would have been above the basement at the time of</p> <p>14 the fire?</p> <p>15 A. I didn't go back to the actual diagrams. But in that</p> <p>16 general areas, there was a dining room and --</p> <p>17 Q. Okay. But it looks to me from that picture that what</p> <p>18 was above the basement is also now in the basement?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. So I guess maybe I'm not understanding. What is</p> <p>21 it that is -- I thought you were saying earlier that as</p> <p>22 you look to the right, it's not as damaged as it is in</p> <p>23 the area where the fridge is. So but the floor is gone</p> <p>24 to the right, so what is --</p> <p>25 A. What I'm looking at is just the remnants of the</p>	<p>133</p> <p>1 would give you this level of damage to the</p> <p>2 refrigerator, and putting it in -- put it in the</p> <p>3 position that it was in relative to the rest of the</p> <p>4 structure.</p> <p>5 Q. With the origin of the fire being the area of the</p> <p>6 fridge, can you tell me how the fire spread in the</p> <p>7 house?</p> <p>8 A. That's going to be more Steve's purview. But what I'll</p> <p>9 tell you is, is looking at all of -- essentially, when</p> <p>10 you're looking at the condition -- I'm looking</p> <p>11 primarily at the condition of the refrigerator and</p> <p>12 where it's at in the structure. And I can tell you</p> <p>13 with the level of destruction, and the fact that</p> <p>14 everything's -- all of the combust -- the vast majority</p> <p>15 of combustibles within it were burned away, which then</p> <p>16 removes the structure in a way it then collapsed in on</p> <p>17 itself. That's showing me the fire is coming from</p> <p>18 within the refrigerator, not from without.</p> <p>19 Q. Gotcha. Let's look at paragraph three on page three of</p> <p>20 your report. That second sentence of paragraph three</p> <p>21 says this extremely concentrated damage occurred with</p> <p>22 this refrigerator closely surrounded by drywall on</p> <p>23 three sides. First, let me just ask you, the extremely</p> <p>24 concentrated damage occurred with the drywall on three</p> <p>25 sides. That's your opinion; you're not relying on Mr.</p>
<p>134</p> <p>1 structure there. You can see the supports, the</p> <p>2 partitions. As you get farther and farther away from</p> <p>3 the refrigerator, you see more and more structure.</p> <p>4 Q. Oh, okay. So you're talking about those wood beams</p> <p>5 down at --</p> <p>6 A. The partition. Well, yeah. I mean, among other</p> <p>7 things. I mean, if you just look at what -- the</p> <p>8 structure that's left, I'm just trying to give you in</p> <p>9 general.</p> <p>10 Q. Yeah. I see the concrete wall there. But then also,</p> <p>11 which wood parts are you referring to with those --</p> <p>12 A. Well, you see the partition -- the partitions down in</p> <p>13 the basement. And some of them are kind of sticking</p> <p>14 up. And then -- and then the ones that are still above</p> <p>15 the basement to the right.</p> <p>16 Q. Okay. Assuming that the fire had started in the living</p> <p>17 room, are you saying that you would not see this type</p> <p>18 of damage to the -- those wood structures in relation</p> <p>19 to the area where the fridge is?</p> <p>20 A. I was mainly focused more on the refrigerator itself.</p> <p>21 I mean, you've got to take all these things in context.</p> <p>22 You can't just pull one thing out. But what I'll tell</p> <p>23 you is I could not come up with a hypothesis for the</p> <p>24 fire starting, like you were saying specifically in the</p> <p>25 living room. That was one we discussed at length, that</p>	<p>135</p> <p>1 Cottingham for that, are you?</p> <p>2 A. Right. I'm talking about the refrigerator there.</p> <p>3 Q. Okay. Fair to say, from looking at the pictures we</p> <p>4 just looked at, the drywall and the floor and the --</p> <p>5 around the refrigerator was consumed by the fire,</p> <p>6 right?</p> <p>7 A. You're taking about the dry -- the -- first of all, on</p> <p>8 the drywall, you're not talking about drywall on the</p> <p>9 floor, but you're talking about the drywall partitions</p> <p>10 that surrounded the refrigerator on three sides?</p> <p>11 Q. Right, the drywall was in the, well, alcove, I guess;</p> <p>12 is that what they call that? The alcove was consumed</p> <p>13 by the fire, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How do you know that the drywall didn't protect</p> <p>16 the fridge for some period of time until it was</p> <p>17 completely consumed by the fire?</p> <p>18 A. Well, it would have.</p> <p>19 Q. Okay. So it -- it did? Is that -- I mean, that's what</p> <p>20 you --</p> <p>21 A. Well, it depends on when you say protected. I mean, it</p> <p>22 isolated it from other parts of the structure. And</p> <p>23 that's when we've been talking about fire starting in</p> <p>24 the living room, it has to basically wrap around or go</p> <p>25 through that drywall to get to the refrigerator.</p>
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<p>137</p> <p>1 Q. Okay. The appliances in the kitchen, did you do 2 anything to determine which of them have the highest 3 fuel load? 4 A. I'm not sure what you're referring to. 5 Q. Do you know what -- do you know what fuel load means? 6 A. Yes. 7 Q. Okay. And what does it mean? 8 A. Basically, you're talking about amount of available 9 fuel and energy that could be released when you burn 10 that fuel. 11 Q. Did you determine that with respect to any of the 12 appliances in the kitchen? 13 A. Interesting question. Yeah, I would say -- yeah, 14 it's -- yeah, yes. 15 Q. Which ones? 16 A. Well, the refrigerator is going to be with its -- the 17 urethane foam, part -- the two part urethane foam, the 18 plastic liner, the polymer liner, its contents, the 19 refrigerant. I mean, that's going to be a heavy fuel, 20 if that's what you're asking, versus a microwave that 21 has fewer combustible components, or a dishwasher or -- 22 Q. Okay. Or oven? 23 A. Oven, or range. Right, right. Range top. 24 Q. Assuming that the fridge -- I want you to assume for 25 the sake of argument that it was attacked on fire -- by</p>	<p>139</p> <p>1 not. In fact, there's some areas where we could 2 actually saw some of the linoleum in the control 3 surface of the refrigerator. 4 Q. Okay. Let me just make sure I'm understanding you. I 5 guess by looking at the sub-floor, you're able to tell 6 which side was up, facing -- 7 A. Yes. 8 Q. -- above, and which side of it was facing below towards 9 the crawl space? 10 A. Yes. And we took pictures before we excavated it to 11 show you the position it was in. 12 Q. Okay. And looking at photo 29, I think you're -- it's 13 showing us all this char in that photo, right? 14 A. Yes. 15 Q. And is that -- are we looking at the side of the 16 sub-floor that would have been facing the crawl space? 17 A. Yes. 18 Q. Okay. And what -- I think, if I understand you 19 correctly, what you're saying is that there is more 20 evidence of burning on the underside of the sub-floor 21 below the fridge, is that right? 22 A. This particular piece is, yes. 23 Q. Okay. So hypothetically assume for the sake of 24 argument that the fire started in the kitchen in the 25 area of the stove. After the fire, if you found</p>
<p>138</p> <p>1 fire from the front. 2 A. Okay. 3 Q. Would you agree that the structure, the drywall on the 4 three sides would concentrate the heat in that area of 5 the fridge? 6 A. Yes. 7 Q. Let's look at -- referencing the report numbered now 8 photograph 27 of the report. 9 A. Okay. Photograph number 27? 10 Q. Yeah. Sorry. Photograph 29. 11 A. Twenty-nine. 12 Q. Which is page 27 of the photos. You agree that that -- 13 is that -- well, strike that. 14 It says close up view of the floor under the 15 involved refrigerator bottom door. What are you 16 showing this picture for? 17 A. The sub -- basically, we've got the unburned remnants 18 of the sub-floor that was underneath the refrigerator. 19 Q. Okay. 20 A. The bottom door of the refrigerator, probably I'd 21 better be clear. 22 Q. Gotcha. I mean, it's not pristine, right? 23 A. No. But what's interesting is the bottom side, in 24 other words, the crawl space side is heavily charred. 25 And then if you flip it over, you'd see the top side is</p>	<p>140</p> <p>1 sub-floor like this underneath the fridge, I guess what 2 I'm asking is, are you saying that you would not see 3 that type of burning underneath the sub-floor? 4 A. I -- I don't -- try the question again. I'm sorry. 5 Q. Sure, yeah. I'm just trying to understand, if the fire 6 had started somewhere else in the kitchen other than 7 the fridge, and you came upon the scene and found this 8 sub-floor that you see in photograph 29, would you be 9 able to say that -- that -- well, strike that. 10 Assuming that the fire started somewhere 11 other than the fridge, are you saying that you wouldn't 12 see this type of burning on the under part of the 13 sub-floor? 14 A. I'm not saying that necessarily, okay. I mean, this is 15 just one piece of evidence. There's a lot of different 16 factors that go into something like this. But what 17 that's showing me is that door on the refrigerator fell 18 early and protected that floor, and the burning 19 underneath, in my mind, okay, clearly shows that, 20 again, this is -- this is all occurring early in the 21 fire, not late. 22 Q. Okay. Do you know what caused the door -- well, strike 23 that. 24 How many doors are on the fridge? 25 A. Three.</p>



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<p>141</p> <p>1 Q. And which door came off?</p> <p>2 A. The one that was protecting this particular area we're</p> <p>3 talking about is the bottom door.</p> <p>4 Q. Okay.</p> <p>5 A. It was -- it was on the floor first.</p> <p>6 Q. Okay. And do you know what caused it to come off?</p> <p>7 A. Well, yeah. I'm sure fire damage.</p> <p>8 Q. Okay. Okay.</p> <p>9 A. I mean --</p> <p>10 Q. All right. I can't recall right now, it's been so</p> <p>11 long. But the other doors, were they found on or off</p> <p>12 the fridge?</p> <p>13 A. Off.</p> <p>14 Q. Do you know how?</p> <p>15 A. They were in front and basically layered on top of</p> <p>16 that -- the door, the bottom door.</p> <p>17 Q. Okay.</p> <p>18 A. And what's interesting was is there was a layer of</p> <p>19 debris between the bottom door and those doors.</p> <p>20 Q. And what does that mean? Why is that of interest?</p> <p>21 A. Again, it shows the bottom door fell off very early</p> <p>22 because it was laying directly on the floor, nothing in</p> <p>23 between it, so no fall down noted burn debris, you</p> <p>24 know, that -- and that flooring is then on -- directly</p> <p>25 on the gravel. So -- and then you've got the other</p>	<p>143</p> <p>1 trusses. And then on top of that, the sub-flooring,</p> <p>2 you've got your floor finishing treatments. Okay. In</p> <p>3 this case, you've got the vinyl covering. Okay. So</p> <p>4 during the fire, this -- this lower door falls down and</p> <p>5 protects the out -- the floor before it becomes burnt.</p> <p>6 Okay. So the portion of the floor it's covering is</p> <p>7 protected by that metal door. And also the front</p> <p>8 surface of the door, you can see there's still painted</p> <p>9 areas in parts where the fire didn't impinge on it. So</p> <p>10 that's laying in direct contact with the other. And</p> <p>11 they're somewhat clean, if you know what I'm trying to</p> <p>12 say. And then you cover that with fire debris, typical</p> <p>13 what would have fallen down around it. And then you</p> <p>14 add the doors on top of it. For someone to have moved</p> <p>15 all that, they would have had to have been very</p> <p>16 carefully and deliberately, basically, tried to</p> <p>17 actuate -- again, the fact that it wasn't burned tells</p> <p>18 you it wasn't exposed to the fire. It was protected by</p> <p>19 the metal door. I mean, the things together made</p> <p>20 sense, that's where they originally were. They weren't</p> <p>21 blown around by a fire hose, or deliberately picked up</p> <p>22 by somebody and moved around.</p> <p>23 Q. And you talked about the extreme damage to this fridge.</p> <p>24 But I think you called it -- like how it collapsed in</p> <p>25 on itself?</p>
<p>142</p> <p>1 doors that fall down some period after -- later after</p> <p>2 other materials have fallen -- you know, fallen down.</p> <p>3 Q. When you got to the site, the fire was obviously</p> <p>4 extinguished by the fire department and the firefighter</p> <p>5 personnel?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know that -- for sure that none of that stuff</p> <p>8 was moved by the firefighters and fire extinguishing</p> <p>9 efforts?</p> <p>10 A. None of what stuff?</p> <p>11 Q. The doors and -- the two doors, and the bottom --</p> <p>12 bottom door?</p> <p>13 A. Yes.</p> <p>14 Q. How do you know that?</p> <p>15 A. Just looking at the evidence and the way they're</p> <p>16 buried. I mean --</p> <p>17 Q. Yeah. Help me understand, what is it about the way</p> <p>18 it's buried that would tell you --</p> <p>19 A. Okay. You've got --</p> <p>20 Q. -- it couldn't have been moved?</p> <p>21 A. Okay. You've got -- if you can picture -- you</p> <p>22 understand how the structure's constructed, right? So</p> <p>23 in this particular case, you've got a crawl space. On</p> <p>24 the bottom surface of that crawl space you have gravel.</p> <p>25 Above that, you have your wood sub-flooring and your</p>	<p>144</p> <p>1 A. Yes, uh-huh.</p> <p>2 Q. And what you observed was it was pretty unusual that</p> <p>3 everything was so -- tell me if I'm wrong, but the most</p> <p>4 severe you've ever seen on a fridge, basically?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And all of the -- all of the combustible</p> <p>7 contents within the fridge that you saw on June 2nd</p> <p>8 were totally consumed by the fire?</p> <p>9 A. The vast majority, certainly. I mean, yeah, they</p> <p>10 were -- if not wholly consumed, very close.</p> <p>11 Q. And that's what you'd expect if the fridge was the</p> <p>12 origin of the fire, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. And it's not what I would expect if it was attacked by</p> <p>16 the fire.</p> <p>17 Q. All right. Right. In other words, if the fridge was</p> <p>18 attacked by fire external, you're saying you would not</p> <p>19 expect to see combustibles surviving inside, and you</p> <p>20 wouldn't expect to see plastic, you know, the -- the</p> <p>21 plastic components of the fridge in the fridge after</p> <p>22 the fire, would you?</p> <p>23 A. I would, to -- to some degree. I mean, again --</p> <p>24 Q. Oh, you would, you would. I'm sorry, right.</p> <p>25 A. If it's attacked by the fire, I would expect it to be</p>



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<p style="text-align: right;">145</p> <p>1 different than what I'm seeing here.</p> <p>2 Q. Right. I -- I misspoke. So you're saying that if --</p> <p>3 if the fridge was attacked by fire external to the</p> <p>4 fridge, you would expect to see some combustibles in</p> <p>5 the fridge surviving the fire?</p> <p>6 A. Well, I would -- I would expect to see heavy damage but</p> <p>7 I would not expect to see this.</p> <p>8 Q. The degree -- you wouldn't expect to see the degree of</p> <p>9 damage that you saw?</p> <p>10 A. Well, and the positioning. I mean, there's a lot of --</p> <p>11 I wouldn't expect to see the refrigerator in this</p> <p>12 condition.</p> <p>13 Q. Right. Okay. One second. Where is my report?</p> <p>14 A. You need -- oh, because I still have the exhibits here</p> <p>15 with my report and --</p> <p>16 Q. That's okay, I've got it.</p> <p>17 A. Okay.</p> <p>18 Q. Page three, paragraph four. I've already asked you</p> <p>19 questions about those conductors that you found and the</p> <p>20 electrical activity. Strike that.</p> <p>21 I asked you that question already. Okay.</p> <p>22 Page three, paragraph five, damage to all other</p> <p>23 appliances was consistent with varying degrees of fire</p> <p>24 attack. And then you reference various photos here.</p> <p>25 There was no evidence of branch wiring or other</p>	<p style="text-align: right;">147</p> <p>1 A. Branch wiring can run -- be run through walls or floors</p> <p>2 or ceilings.</p> <p>3 Q. I understand, okay. Now, the photos you reference are</p> <p>4 the ones attached to your report. And 05, I believe,</p> <p>5 is of the refrigerator. What is -- oh, I see. 06</p> <p>6 shows a range top and a microwave?</p> <p>7 A. Right, and relative position to the refrigerator. Just</p> <p>8 trying to give you a sense of where everything was.</p> <p>9 Q. Okay. And it says that the damage to all other</p> <p>10 appliances was consistent with varying degrees of fire</p> <p>11 attack. I guess, are you just basically saying that</p> <p>12 some appliances were burned more than others? Or tell</p> <p>13 me if I'm wrong.</p> <p>14 A. They were burned differently. Let's put it that way.</p> <p>15 I mean, we -- I don't -- when you say more, I'm not</p> <p>16 sure I understand what you mean.</p> <p>17 Q. Okay. So it's not -- so you're not saying it's the</p> <p>18 degree to which each of those other appliances were</p> <p>19 burned. You're just saying that they had a different</p> <p>20 appearance?</p> <p>21 A. It's the con -- yes. Basically, it's the context.</p> <p>22 Q. And what is it about the context? Did we -- I think we</p> <p>23 talked about that already, correct?</p> <p>24 A. Well, I mean, clearly, when you -- you could see what</p> <p>25 they -- structurally, they're still intact.</p>
<p style="text-align: right;">146</p> <p>1 competent ignition sources located under the floor</p> <p>2 under the refrigerator. Okay. So first let me ask</p> <p>3 you, what is branch wiring?</p> <p>4 A. Branch wiring is -- the reason they call it branch is</p> <p>5 the basic -- it's the wiring -- the structural wiring</p> <p>6 for the house or the structure in this case. So it's</p> <p>7 the wiring that typically runs through walls or floors.</p> <p>8 And it's copper or aluminum, and it's distributing the</p> <p>9 power from the service, electrical service located in</p> <p>10 the structure to various outlets, appliances,</p> <p>11 receptacles, switches, lighting.</p> <p>12 Q. Gotcha.</p> <p>13 A. So they call that branch wiring, basically.</p> <p>14 Q. And is this sort of a reference to what Mr. Magee told</p> <p>15 you about being a -- what did he say, call it?</p> <p>16 A. Well, each one was a home run or basically --</p> <p>17 Q. Home run, right.</p> <p>18 A. Yeah. Each appliance was on its own circuit.</p> <p>19 Q. Is that what that means, there's no branch wiring with</p> <p>20 a home run? Is that something --</p> <p>21 A. No.</p> <p>22 Q. It's different?</p> <p>23 A. What I'm saying is I didn't find any branch wiring</p> <p>24 underneath -- run underneath the floor in that area.</p> <p>25 Q. Ah, okay.</p>	<p style="text-align: right;">148</p> <p>1 Q. Okay.</p> <p>2 A. And you could see their position relative to the other</p> <p>3 debris and just their overall condition, contents, you</p> <p>4 know. I mean, there's -- if you open them up, you</p> <p>5 could -- like in the microwave, for instance, you could</p> <p>6 still see the wiring in there.</p> <p>7 Q. Okay.</p> <p>8 A. The internal components were where you would expect</p> <p>9 them to be.</p> <p>10 Q. All right. And did you know what was actually under</p> <p>11 the floor, under the fridge pre-fire?</p> <p>12 A. When you say know, I mean, I could tell you based on</p> <p>13 what -- as we excavated, what we found, which would</p> <p>14 give you a pretty good indication of what was under the</p> <p>15 fridge.</p> <p>16 Q. Okay. What was it?</p> <p>17 (Mr. Moss exited deposition room at 4:12</p> <p>18 p.m.)</p> <p>19 THE WITNESS: There was a -- the copper line</p> <p>20 that ran to the -- propane line that ran to the LP</p> <p>21 range top, and the structural components we talked</p> <p>22 about before. That's what we found.</p> <p>23 BY MR. FRANCO, CONTINUING:</p> <p>24 Q. Okay. Did you tell me already what the floor covering</p> <p>25 in the kitchen was?</p>



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<p>149</p> <p>1 A. There's pictures in here, but it looked like a vinyl.</p> <p>2 Q. Help me understand, pre-fire condition.</p> <p>3 (Mr. Moss reentered deposition room at 4:12</p> <p>4 p.m.)</p> <p>5 BY MR. FRANCO, CONTINUING:</p> <p>6 Q. Would it be refrigerator sitting on top of -- did you</p> <p>7 say vinyl?</p> <p>8 A. Whether -- sometimes they -- they put a floor covering</p> <p>9 between a refrigerator and a floor. We didn't find any</p> <p>10 evidence of that. The -- what I was -- the primary</p> <p>11 area where we found evidence of the unburnt floor</p> <p>12 covering was in front of the lower door when it flipped</p> <p>13 down.</p> <p>14 Q. Okay.</p> <p>15 THE WITNESS: Good pear?</p> <p>16 MR. MOSS: This stuff's all I got.</p> <p>17 THE WITNESS: No, no, no. It's -- you can</p> <p>18 always tell a good one.</p> <p>19 MR. MOSS: It's making a mess.</p> <p>20 THE WITNESS: They're good, too.</p> <p>21 BY MR. FRANCO, CONTINUING:</p> <p>22 Q. Okay. Looking at page four now, paragraph one. That</p> <p>23 first paragraph, you talked about some of that already.</p> <p>24 But I want to talk about the degree of inward collapse</p> <p>25 and the position of the doors. With respect to the</p>	<p>151</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is the basis for that opinion?</p> <p>3 A. I'm losing my microphone here, give me a second.</p> <p>4 Q. Well, let me ask you this. Is the basis for that</p> <p>5 opinion that there's a lack of external damage to the</p> <p>6 bottom of the refrigerator door exterior on the floor</p> <p>7 in front?</p> <p>8 A. That's part of it.</p> <p>9 Q. What else?</p> <p>10 A. The overall condition of the refrigerator, the position</p> <p>11 of it relative to the sub-floor, the crawl space, the</p> <p>12 gravel. I mean, there's a lot of factors. Those are</p> <p>13 the primary ones.</p> <p>14 Q. Okay. Okay. The first sentence on paragraph three</p> <p>15 says with the refrigerator closely surrounded on three</p> <p>16 sides by fully enclosed drywall partitions, external</p> <p>17 fire attack would have interrupted power to the</p> <p>18 refrigerator before the fire reached internal</p> <p>19 components unless it occurred from the front. So is</p> <p>20 the basis for your opinion that power to the fridge was</p> <p>21 not interrupted before reaching internal components of</p> <p>22 the fridge, is the basis for that your belief that the</p> <p>23 fridge was not attacked by fire from the front?</p> <p>24 A. I'm not sure I understand your question. But what I'm</p> <p>25 trying to convey there is, is if you -- the power</p>
<p>150</p> <p>1 inward collapse, I think you've already told us that</p> <p>2 that's something -- the severity of that is something</p> <p>3 that you hadn't seen on a fridge before, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Are you saying that that type of inward collapse</p> <p>6 could not occur if the fire attacked from outside the</p> <p>7 fridge?</p> <p>8 A. Basically, the overall context, everything I was</p> <p>9 seeing. I looked at damage, type of damage and the way</p> <p>10 the configuration -- the final configuration of the</p> <p>11 refrigerator. You know, that whole context, yes. It</p> <p>12 could not have occurred -- I could not come up with a</p> <p>13 hypothesis that would allow me, based on the evidence,</p> <p>14 to conclude that it started outside the refrigerator</p> <p>15 and moved its way in. It just wouldn't look like that.</p> <p>16 Q. Paragraph two on page four says the degree of fire</p> <p>17 consumption and damage to the internal components --</p> <p>18 let me stop right there. Is that referring to</p> <p>19 consumption and damage to the components of the</p> <p>20 refrigerator?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. We already talked about the electrical activity</p> <p>23 in paragraph two, right? Okay. So in paragraph three</p> <p>24 on page four, it's your opinion that the fridge was not</p> <p>25 attacked by fire from the front, correct?</p>	<p>152</p> <p>1 cord's on the back, the refrigerator is protected on</p> <p>2 three sides by the drywall.</p> <p>3 Q. Okay.</p> <p>4 A. So -- so that what -- your exposure would be from the</p> <p>5 front.</p> <p>6 Q. Yeah. I think I understand that. But what I'm trying</p> <p>7 to figure out is, I think -- and correct me if I'm</p> <p>8 wrong. But I think what you're saying in the report is</p> <p>9 that power was not interrupted first in this case,</p> <p>10 right? In other words -- or, I'm sorry, I misspoke.</p> <p>11 It says external fire attack would have interrupted the</p> <p>12 power to the refrigerator before the fire reached the</p> <p>13 internal components unless it occurred from the front.</p> <p>14 So I guess what you're saying, if the fire did occur</p> <p>15 from the front, you wouldn't expect power to be</p> <p>16 interrupted, right?</p> <p>17 A. Well, what I was saying there, remember, you were --</p> <p>18 you've been asking me about, you know, fire from the</p> <p>19 living room side. So basically a fire attacks the</p> <p>20 refrigerator from the rear, the living room side, you</p> <p>21 know, or the sides, it has to go through that drywall.</p> <p>22 That's where the branch wiring is run which powers the</p> <p>23 refrigerator, plus the power cord of the refrigerator</p> <p>24 is hanging in that area. So as the fire is burning to</p> <p>25 get to the refrigerator, involve the refrigerator from</p>



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<p>153</p> <p>1 those directions, it would involve that wiring first, 2 which would likely interrupt the power to the 3 refrigerator. That's what I'm trying to say. 4 Q. Gotcha. I gotcha. Okay. Let's look at your 5 conclusions again here. 6 A. Okay. 7 Q. Which for the first one, the fire loss was caused by a 8 failure within the involved Sears Kenmore Elite brand 9 Trio refrigerator. I just need to just ask you, did we 10 discuss today all the bases for that opinion? Is there 11 -- 12 A. I don't know how to answer that question but -- 13 Q. Well, let me ask you this. Is there something critical 14 that you think, hey, here's a big reason why I believe 15 that, and you didn't ask me that question? 16 A. Nothing glaring. But, I mean, I'm sure there's further 17 discussion -- 18 Q. Sure. 19 A. You know, opportunities there. 20 Q. Okay. Again -- strike that. 21 Paragraph two of the conclusions, this 22 failure resulted in the ignition and consumption of the 23 combustible internal components of this refrigerator. 24 I think we talked about that a little already. But 25 same question, is there anything glaring that you</p>	<p>155</p> <p>1 A. Roughly, right. 2 Q. And did you do anything to rule out the dishwasher as 3 being the cause of the fire? 4 A. Yes, I looked at it. 5 Q. And what specifically did you do to rule it out? 6 A. I looked at the position, looked at the damage relative 7 to the refrigerator. And the biggest thing is when 8 you look at the damage to the refrigerator, again, if 9 you rule out external attack, it makes it pretty easy. 10 But -- but I did look at, you know, everything 11 including the dishwasher, I looked at the electrical 12 service, all that. 13 Q. Okay. Did you find conductors in the dishwasher also 14 that had evidence of electrical activity on them? 15 A. I don't recall specifically, but I know I looked in 16 there. I certainly found, you know, electrical 17 conductors and things. 18 Q. I mean, it wouldn't surprise you if -- 19 A. No. 20 Q. -- there was conductors in there that had electrical 21 activity? 22 A. No. 23 Q. You testified it doesn't surprise you to find it in the 24 fridge, right? 25 A. No. I -- I -- again, no.</p>
<p>154</p> <p>1 think, hey, there's a big, major reason why this 2 happened and we haven't talked about that yet? 3 A. Not that I can think of, I mean, again -- 4 Q. I understand. I'm just -- 5 A. -- we've talked about a lot. 6 Q. Yeah. 7 A. I think -- I thought the report spells it out pretty 8 clearly. 9 Q. Okay. Now, I don't think I asked you this one. Do you 10 know what the first combustible was that actually 11 ignited? 12 A. No. 13 Q. Let's go to page two, paragraph four. Just a little 14 bit of background on information you got from Mr. 15 Magee. I'm sorry, it's paragraph five. The morning of 16 the fire, Mr. Magee got up at 4:00 a.m., EDT, put some 17 clothes in the dryer, took a shower, got the clothes 18 from the dryer, put the dishes in the dishwasher, and 19 started it before leaving about 4:25 a.m. EDT to go to 20 McDonald's to get something to eat. First I wanted to 21 ask you, you've got Dan Meyer seeing the fire around 22 5:30, which is about an hour after Mr. Magee starts 23 that dishwasher, right? 24 A. Well, yes. 25 Q. Roughly?</p>	<p>156</p> <p>1 Q. You'd expect it. Okay. 2 A. I'd expect it under certain conditions. 3 Q. Right. Other than your visual observations of the 4 dishwasher, did you do any other testing or analysis to 5 rule it out as a cause? 6 A. Other than inspecting it there at the scene, I did not 7 do any physical testing or destructive testing. 8 VIDEO OPERATOR: You lost your mic again. 9 THE WITNESS: I'm sorry, I got my foot 10 hooked in it. Sorry about that. 11 BY MR. FRANCO, CONTINUING: 12 Q. Let's look at on page two, you list exhibits. And one 13 of them is the -- number three is the LG and Sears 14 Kenmore refrigerator recall. Strike that. 15 I think I asked you that already. Okay. Do 16 you want to do that now? 17 MR. MOSS: Sure. Let's take a break. 18 MR. FRANCO: Almost done. 19 VIDEO OPERATOR: All right. It is currently 20 4:26 and we are going off the record. 21 (Recess taken at 4:40 p.m.) 22 VIDEO OPERATOR: This is DVD number three in 23 the video deposition of William Mers Kelly. We are now 24 back on the record and it is 4:40. Counsel. 25 BY MR. FRANCO, CONTINUING:</p>



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<p>157</p> <p>1 Q. Okay. Mr. Kelly, back on the record here. Earlier 2 today I was asking you some questions with respect to 3 your experience in designing refrigeration systems. 4 Now I want to ask you in particular with respect to the 5 subject model refrigerator. First, I guess, what's 6 your basic understanding of this particular model of 7 refrigerator? It's -- what kind, how big was it, and 8 what was it? You know, how many cubic feet, I guess, 9 or whatever, and -- 10 A. Okay. I think -- you know, some of that's in the 11 report. But, I mean, are you looking for dimensions? 12 Are you looking for just -- just type of construction? 13 I mean, what -- what -- 14 Q. Yeah. Let's start with the type of construction 15 basically. 16 A. Okay. You've got a steel metal enclosure, a shell per 17 se, that has structure to support internal structure 18 and doors and things. You also have a vacuum formed 19 polymer liner that's attached inside that steel 20 enclosure both of the doors and the shell. And then 21 what they -- what you do is you -- that -- the cav -- 22 the space between that polymer interior member and the 23 structural steel outer member is filled with a two part 24 urethane foam. In this day and age, it's the low CFC 25 or -- it's HC foam.</p>	<p>159</p> <p>1 Q. Phone conversation? 2 A. Yes. 3 Q. Okay. Who else was on the line? 4 A. Just -- it was a one-on-one conversation with -- 5 between myself and Mr. Fricke. 6 Q. Okay. Steve wasn't in on that conversation? 7 A. No. I talked to him previously, actually, the day 8 before. 9 Q. Okay. And so Mr. Fricke told you about -- what did he 10 tell you? 11 A. That there's some issues with this -- known issues with 12 this refrigerator. There's been a lot of complaints 13 on-line, which I had seen and known about when I 14 searched by model number later here recently. And then 15 also that there's a new article in Consumer Reports 16 that's coming out concerning this particular 17 refrigerator, which I haven't had a chance to read 18 or -- 19 Q. Okay. And so when you say this particular 20 refrigerator, you're referring to -- 21 A. This particular series or model. 22 Q. Okay. So in particular, the model refrigerator that 23 Mr. Magee had at the time of the fire? 24 A. Yes, basically be consistent. 25 Q. And did Mr. Fricke tell you in particular what the</p>
<p>158</p> <p>1 Q. All right. Now, with respect to the -- strike that. 2 You've already told us, I think, that you 3 don't have any opinion as to what it was that -- what 4 it was within the fringe that actually failed. So my 5 next question would be you don't have any opinions with 6 respect to any particular defect or problem in the 7 manufacturing process for this fridge, do you? 8 A. When you say opinion -- 9 Q. Well, let me just ask, do you have an opinion that the 10 fridge was defective in some way? 11 A. Well, there's -- I know there's been some evidence of 12 some failures within these refrigerators that's come to 13 be known to me here recently. I haven't really had a 14 chance to really dig into it. So I -- I know of some 15 known failure modes within this refrigerator. 16 Q. Okay. Well, first, how did you learn this information? 17 A. In talking to Mr. Fricke, Chuck or Charles Fricke, and 18 Steve Cottingham. 19 Q. When did you speak with them? 20 A. I've spoke to them off and on over a long period of 21 time. 22 Q. About how recently when you learned about -- you're 23 telling me about this new information you learned? 24 A. Last night on my way up here, I had opportunity to 25 check in with Chuck and Steve.</p>	<p>160</p> <p>1 issue was? 2 A. The one thing we discussed is the -- there was -- there 3 was an issue with it that was causing the light inside 4 to remain on. 5 Q. And as of the time of your report you've authored, you 6 did not have any opinion that some part of the fridge 7 was defective, did you? 8 A. When you say opinion, I mean, I -- I -- I did not 9 uncover any evidence that would lead me to a specific 10 failure within this refrigerator. 11 Q. Okay. So did you -- all right. All right. 12 A. You're getting tangled up, too. That's all right. 13 Q. Yeah. After your conversation with Mr. Fricke last 14 night, do you have an opinion as to whether or not 15 there's a defect in some component of this fridge? 16 A. An opinion as to -- you mean, just based on what he was 17 saying, I mean, certainly that -- that is a failure 18 mode that could result in the type of damage and fire 19 we're seeing here. 20 Q. But I'm talking about Mr. Magee's fridge. Do you have 21 an opinion that Mr. Magee's fridge was designed 22 defectively? 23 A. Again, I have not read enough -- I haven't read the 24 information myself. 25 Q. I understand.</p>



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<p>161</p> <p>1 A. But what was conveyed to me is, is there's a problem 2 with the same type of refrigerator that he had, that 3 same model number, that same series. 4 Q. So based on that, do you have an opinion? 5 A. That -- opinion? 6 Q. That Mr. Magee's fridge, some component of it was 7 defective? 8 A. Well, certainly, if -- if what's being explained to me 9 is true, then -- then -- and -- and that is consistent 10 with his refrigerator, then that component, at least -- 11 or that there -- there is a known problem with that 12 part of the refrigerator. 13 Q. I understand that. But I'm just asking if your opinion 14 is that based on what Mr. Fricke told you, some 15 component of the fridge, Mr. Magee's fridge was in fact 16 designed in a defective manner? 17 A. Based on what he was telling me. Again, without 18 reading it for myself, based on what he was telling me, 19 this defect was present in this refrigerator. 20 Q. Okay. Do you have the opinion that it was defective, 21 Mr. Magee's fridge, yes or no? 22 MR. MOSS: Well, I don't know if it is yes 23 or no. He's just told you -- he has told you, yes, he 24 believes there's a defect, he learned that, and the 25 foundation for which he got from Mr. Fricke.</p>	<p>163</p> <p>1 didn't say in your report there was a defect in this 2 refrigerator? 3 A. I did not use that verbiage. I said that the 4 refrigerator caused the fire. 5 Q. Okay. 6 A. And in my mind, that's defective, but I didn't use that 7 word. 8 Q. Okay, okay. 9 A. It certainly wasn't designed to do that. 10 Q. All right. I think I understand now. You're saying at 11 the time you authored the report, your opinion was that 12 the refrigerator caused the fire; at that time, you 13 didn't know what particular component failed, right? 14 A. I didn't find any evidence of a specific failure. 15 Q. Right. 16 A. I mean, I've investigated, as I mentioned before, many 17 fires involving refrigerators. And I know, based on 18 past experience, of those and recalls and what have 19 you, and also working in the field, what can cause 20 fires. 21 Q. And -- 22 A. But at that time, I was not aware of this specific 23 issue and failure. 24 Q. Right. And then but last night you learned from Mr. 25 Fricke that there's been some issues with this</p>
<p>162</p> <p>1 THE WITNESS: I mean, that -- that, I think, 2 says it all right there. 3 BY MR. FRANCO, CONTINUING: 4 Q. Okay. So you believe there's a defect in Mr. Magee's 5 fridge? Yes? 6 A. Yes. 7 Q. Okay. And that's based on what Mr. Fricke told you? 8 A. Yes. 9 Q. Yes. Is it based on anything else? 10 A. Not at this point. 11 Q. Okay. And is it your opinion within a reasonable 12 degree of engineering certainty that Mr. Magee's fridge 13 was defectively designed in some manner? 14 A. Yes. Designed or manufactured. I mean, there was a -- 15 basically, there was a defect that caused this fire. 16 Q. And the basis for that opinion is what Chuck Fricke 17 told you on the phone? 18 A. No, no. It's based on -- as we've been going through 19 here pretty thoroughly, based on the evidence. 20 Q. Okay. But when you authored the report, you didn't 21 hold the opinion that the fridge was defective, did 22 you? 23 A. It caused a fire. So I don't know how you define 24 defective, okay? 25 Q. I understand that, I understand that. Did you -- you</p>	<p>164</p> <p>1 particular model? 2 A. Yes. 3 Q. And what in particular? With the component, did you 4 say? 5 A. I said that basically what he's explaining to me is 6 that there was a -- there was a -- a defect that was 7 allowing the light to stay on continuously. 8 Q. Okay. 9 A. Even when the doors were closed. 10 Q. And did you do any engineering analysis to determine 11 whether or not the -- that problem, the light staying 12 on, existed in the Magee refrigerator? 13 A. I have not. I just heard about it last night when I 14 was driving so -- 15 Q. All right. 16 A. And actually, to clarify, I may have heard it outside 17 of that conversation recently. 18 Q. Okay. From whom? 19 A. I'm thinking now, I think Steve may have mentioned it 20 to the point -- basically the generic failure part of 21 the thing. Not the Consumer Reports article and that 22 whole -- was new last night, had not heard that before. 23 Q. Okay. 24 A. But the general failure mode or problem issue, defect I 25 had heard about before.</p>



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<p>1 Q. Okay.</p> <p>2 A. And I think it was in preparation for this deposition.</p> <p>3 Q. And you mean talking to Steve?</p> <p>4 A. Steve, and/or other parties, like --</p> <p>5 Q. In addition to Steve and Charles Fricke, anyone else</p> <p>6 that you talked to about this issue with the light bulb</p> <p>7 staying on?</p> <p>8 A. One of the paralegals here, you know, when I was</p> <p>9 getting some information, asking some questions, I</p> <p>10 think mentioned it.</p> <p>11 Q. Okay. One of the paralegals here at this law firm,</p> <p>12 Black and Moss?</p> <p>13 A. Yes.</p> <p>14 Q. And what information did you get from the paralegal?</p> <p>15 A. Just, again, generically. The -- you know, this issue</p> <p>16 with the light staying on within the refrigerator.</p> <p>17 Q. I think I asked you this one, you didn't do any</p> <p>18 engineering analysis to determine if the issue with</p> <p>19 light staying on existed in Mr. Magee's fridge, did</p> <p>20 you?</p> <p>21 A. I've not been asked to do that.</p> <p>22 Q. And did you do -- strike that.</p> <p>23 Similarly, I assume you didn't do any</p> <p>24 engineering analysis to determine whether a light</p> <p>25 staying on could cause a fire within a fridge?</p>	<p>1 electrical design of this model refrigerator?</p> <p>2 A. Analysis, as in --</p> <p>3 Q. Anything. Research, reviewed documents, anything?</p> <p>4 A. As far as the specific design of this refrigerator or</p> <p>5 the specific --</p> <p>6 Q. Design of the electrical components?</p> <p>7 A. No.</p> <p>8 Q. Okay. Do you know, with respect to this issue that Mr.</p> <p>9 Fricke and others told you about with light bulbs</p> <p>10 staying on in model refrigerators like this Magee</p> <p>11 refrigerator, do you know what it was that was causing</p> <p>12 the light bulbs to stay on?</p> <p>13 A. My understanding from him, again, there is in high</p> <p>14 level conversations, is there was an issue with the</p> <p>15 design of the circuit board and a specific relay on</p> <p>16 that board.</p> <p>17 Q. Do you know if the circuit board in this case was</p> <p>18 recovered from the fire?</p> <p>19 A. I do not know for sure. I mean, I can tell you that I</p> <p>20 didn't find it. I just found pieces of it.</p> <p>21 Q. Okay. I didn't know. I was just -- maybe it was</p> <p>22 totally burned up in the fire.</p> <p>23 A. Again, I don't know. I didn't examine -- I didn't get</p> <p>24 to dig through it and really examine everything, so I</p> <p>25 don't know.</p>
<p>1 A. You're asking me if I've done any testing or analysis?</p> <p>2 Q. Right.</p> <p>3 A. I mean, I have not done any physical testing.</p> <p>4 Q. Okay.</p> <p>5 A. To basically prove that that could happen, but I</p> <p>6 could -- it's no stretch of the imagination to conceive</p> <p>7 of a way it could happen.</p> <p>8 Q. Okay. And --</p> <p>9 A. So empirically, yeah. I don't have -- I mean, there's</p> <p>10 no doubt in my mind that it could happen.</p> <p>11 Q. Okay. And how is it that it could happen in this</p> <p>12 particular case?</p> <p>13 A. Well, again, I haven't -- I need to get more</p> <p>14 information to be able to answer the particulars for</p> <p>15 this. But, I mean, whenever you have heat and</p> <p>16 electricity in the same area, in an unintended manner,</p> <p>17 and building up to an unintended level, to me,</p> <p>18 there's -- there's always some risk of fire. There's</p> <p>19 --</p> <p>20 Q. Okay. Can you tell me what temperature the light bulb</p> <p>21 would need to reach in order to cause any combustibles</p> <p>22 within a fridge of this model to ignite?</p> <p>23 A. No. I don't know enough yet to be able to make those</p> <p>24 kind of --</p> <p>25 Q. Okay. Did you do any analysis with respect to the</p>	<p>1 Q. Okay.</p> <p>2 A. I suspect not.</p> <p>3 Q. All right. Let's get through this relatively quickly</p> <p>4 here. All right. Since you hold the opinion</p> <p>5 independently of Mr. Cottingham that the origin of the</p> <p>6 fire was within the fridge, just tell me how it is that</p> <p>7 you define quote, unquote, origin of fire?</p> <p>8 A. It's basically in the discussion we've had, whether the</p> <p>9 fire started inside the refrigerator or outside. In</p> <p>10 other words, whether the refrigerator's a victim of the</p> <p>11 fire or the cause of the fire.</p> <p>12 Q. Generally speaking, is there a difference between the</p> <p>13 area of origin versus the point of origin?</p> <p>14 A. I would just say that one's more specific possibly. If</p> <p>15 you say a point, you're thinking, you know, versus an</p> <p>16 area. I think that's the intended meaning.</p> <p>17 Q. And how do you define a fire pattern?</p> <p>18 A. How do I define a fire pattern?</p> <p>19 Q. Yes.</p> <p>20 A. I mean, it's a pattern that's created by a fire. Also</p> <p>21 you could say by heat of a fire, by the byproducts of</p> <p>22 the fire, byproducts of combustion.</p> <p>23 Q. Do you know what is meant by the term heat shadowing</p> <p>24 pattern?</p> <p>25 A. Yes. In fact, I took some pictures down in the</p>



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<p>169</p> <p>1 basement of that phenomenon, just I'd have them.</p> <p>2 Q. And what does it mean, heat shadowing pattern?</p> <p>3 A. Well, basically, you've got -- just like you cast a</p> <p>4 shadow -- energy's energy. So whether it's light or --</p> <p>5 visible energy, or whether it's more of the higher</p> <p>6 energy, heat energy, infrared, what have you, a solid</p> <p>7 object will cast a shadow on another solid object. And</p> <p>8 so you'll shade -- that shaded portion will be shaded</p> <p>9 or -- from the energy, the heat energy as well as the</p> <p>10 length.</p> <p>11 Q. Do you know what a -- how do you define a low burn</p> <p>12 pattern?</p> <p>13 A. What they're talking about there is, is a burn pattern</p> <p>14 -- typically, one of the things you have people look</p> <p>15 for is -- is the orientation of a burn -- and location</p> <p>16 of a burn pattern. So when they talk about a low</p> <p>17 pattern, typically what they're talking about is one</p> <p>18 that's lower than others. So you're looking for --</p> <p>19 because fire typically wants to burn up and out.</p> <p>20 Q. Did you use analysis of low burn patterns in this case?</p> <p>21 A. Again, Steve's focus was more on the structure. And a</p> <p>22 lot of the terms you're using would be in regards to</p> <p>23 the structural origin cause and narrowing it down to an</p> <p>24 area. I used more specific to the refrigerator and the</p> <p>25 condition of the refrigerator.</p>	<p>171</p> <p>1 Q. Did you not follow any particular provision of NFPA 921</p> <p>2 that would have, you know, covered your investigation?</p> <p>3 A. That was necessary for my investigation?</p> <p>4 Q. Right.</p> <p>5 A. No.</p> <p>6 Q. Do you know if Mr. Cottingham did any vector analysis</p> <p>7 at the site?</p> <p>8 A. When you say vector analysis?</p> <p>9 Q. Flame vector analysis?</p> <p>10 A. I mean, certainly, we had discussions along those</p> <p>11 lines. I don't know specifically what formal analysis</p> <p>12 he did.</p> <p>13 Q. Did you do any flame vector analysis?</p> <p>14 A. Like I said, we had discussions. I did not do any</p> <p>15 formal flame vector analysis.</p> <p>16 Q. Close here to being done so -- does NFPA list what it</p> <p>17 is that you should rely upon in determining the origin</p> <p>18 of a fire? What evidence of things you should do and</p> <p>19 rely upon?</p> <p>20 A. It does give you guidelines for basically doing that</p> <p>21 type of work.</p> <p>22 Q. And were there things in particular that NFPA says you</p> <p>23 should rely on in doing an origin investigation that</p> <p>24 you did in this case?</p> <p>25 A. Like -- I mean, I use it as a guideline. So, I mean,</p>
<p>170</p> <p>1 Q. But the only reason why I'm asking is because part of</p> <p>2 your opinions is that the severity of the damage to the</p> <p>3 structure --</p> <p>4 A. Structure being the house or the refrigerator?</p> <p>5 Q. Right. The house I thought?</p> <p>6 A. Okay.</p> <p>7 Q. Isn't that part of your opinion, that there was -- the</p> <p>8 observations that you made on June 2nd with respect to</p> <p>9 the severity of the damage to the structure, in</p> <p>10 particular, those layers underneath the fridge, as</p> <p>11 opposed to the other areas, that led you also to</p> <p>12 conclude that the --</p> <p>13 A. Well, again, I'm assisting Steve in the origin and</p> <p>14 cause. I'm there to back him up, but that's his</p> <p>15 primary thing. I'm -- once we've narrowed it down,</p> <p>16 then I'm focused on the refrigerator in the context of</p> <p>17 that refrigerator. So within the context of the</p> <p>18 refrigerator, plus I can tell you, I mean, you know,</p> <p>19 it's -- I agree with his opinions on the rest of it.</p> <p>20 Makes sense to me. I mean, with my knowledge.</p> <p>21 Q. All right. Your own investigation into the cause of</p> <p>22 this fire on June 2nd, did you follow NFPA 921?</p> <p>23 A. I used 921 as a guide.</p> <p>24 Q. Did you deviate in any respects from 921 on that date?</p> <p>25 A. Define deviate.</p>	<p>172</p> <p>1 is there anything specific you're looking for?</p> <p>2 Q. Let me ask you this. Did you -- we've talked about</p> <p>3 today your observations of witness statements -- or</p> <p>4 your -- strike that.</p> <p>5 We talked about today your conversations</p> <p>6 with Mr. Magee and Dan Meyer. Aside from those</p> <p>7 conversations, did you do any analysis of fire</p> <p>8 dynamics?</p> <p>9 A. When you say fire dynamics, I didn't do any -- I mean,</p> <p>10 again, formal. I mean, Steve and I walked through the</p> <p>11 structure. We talked about what fit, what didn't fit,</p> <p>12 what the evidence was telling us. So we did a lot of</p> <p>13 basically challenging each other's -- our thought</p> <p>14 processes. Yeah, basically -- he had already had a</p> <p>15 chance to review the scene. I did. And then we then</p> <p>16 compared notes. So in a sense, you know, we went</p> <p>17 through these types of things. But so I'm not sure</p> <p>18 exactly what you're asking. But formally, that was not</p> <p>19 part of what I -- I was requested to do.</p> <p>20 Q. Okay. Do you know what arc mapping is?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What is it?</p> <p>23 A. What you're doing is it's -- it's the process of</p> <p>24 identifying electrical activity on conductors or arcing</p> <p>25 per se, and identifying the location of that relative</p>



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<p>1 to the area of origin. So it's a tool that you can use</p> <p>2 to help narrow down your -- the area of origin.</p> <p>3 Q. And did you do any arc mapping at this site on June</p> <p>4 2nd?</p> <p>5 A. At a high level. Basically what I did is I observed,</p> <p>6 you know, arcing, but found out very quickly that it</p> <p>7 wasn't going to be a useful tool in this particular --</p> <p>8 you know, overall. It was -- again, it was another</p> <p>9 data point. As we've talked about, there's been a --</p> <p>10 there was a lot of arcing going on.</p> <p>11 Q. Why wouldn't arc mapping have been a useful tool in</p> <p>12 this situation? Just -- is it because of the damage or</p> <p>13 --</p> <p>14 A. Well, again, when -- maybe I misspoke and gave you the</p> <p>15 wrong impression. It was -- it's a -- it's a useful</p> <p>16 tool, but it wasn't -- I didn't heavily rely on it and</p> <p>17 spend a whole lot of time doing it formally, and</p> <p>18 document it formally because, in this case, it was --</p> <p>19 the amount of arcing was so extensive, and the amount</p> <p>20 of damage was so extensive that -- again, it was a data</p> <p>21 point. But it wasn't worth spending a lot of time</p> <p>22 going further. It was pretty obvious what was going</p> <p>23 on.</p> <p>24 Q. And what is meant by the term fire effect?</p> <p>25 A. In -- in what context?</p>	<p>173</p> <p>1 A. Two hundred dollars an hour, per hour.</p> <p>2 Q. Are you an officer of the company, of Unified?</p> <p>3 A. No. I wish.</p> <p>4 Q. Roughly, how many times have you been retained by the</p> <p>5 firm of Black and Moss?</p> <p>6 A. I don't recall.</p> <p>7 Q. More than five?</p> <p>8 A. To be honest with you, I don't know.</p> <p>9 Q. Have you ever been retained by Johnson and Bell?</p> <p>10 A. Not that I can recall. You have the list. So -- yeah.</p> <p>11 Q. Oh, that list you gave us today?</p> <p>12 A. Yes. I mean, basically that's the search of our</p> <p>13 database by, you know, client.</p> <p>14 Q. Okay, gotcha. So if Johnson and Bell wasn't on that</p> <p>15 list, you wouldn't have been retained by them? Just,</p> <p>16 obviously, if you know?</p> <p>17 A. I -- yes. I mean, again, that isn't a complete list,</p> <p>18 but I don't recall that name.</p> <p>19 Q. Similarly, if LG Electronics and Sears were not on that</p> <p>20 list, you don't --</p> <p>21 A. I can tell you I'm pretty sure I haven't been retained</p> <p>22 by them.</p> <p>23 Q. All right. Okay. The issue that Mr. Fricke informed</p> <p>24 you of with respect to overheating -- or strike that.</p> <p>25 I think Mr. Fricke told you that there was</p>
<p>174</p> <p>1 Q. Well, let's say in the context of an origin</p> <p>2 investigation?</p> <p>3 A. I mean, can you give me a little more?</p> <p>4 Q. Do you have an understanding of how NFPA defines fire</p> <p>5 effect?</p> <p>6 A. I think I know what you're talking about. I mean, you</p> <p>7 know, that's -- that specific term. But what you're</p> <p>8 talking about is effect of a fire on -- and its</p> <p>9 surroundings, is what I think you're referring to.</p> <p>10 Q. Okay.</p> <p>11 (Exhibit No. 9 marked)</p> <p>12 THE WITNESS: I bet your hands get tired in</p> <p>13 that business. I just noticed that.</p> <p>14 MR. MOSS: Carpal tunnel.</p> <p>15 THE WITNESS: That's right. They ought to</p> <p>16 design you a little rest where you get --</p> <p>17 BY MR. FRANCO, CONTINUING:</p> <p>18 Q. I'll just hand you Kelly Exhibit No. 9. This is your</p> <p>19 fee schedule. I just wanted to make sure, what was</p> <p>20 your rate?</p> <p>21 A. Again, this -- yeah. This is the fee schedule for our</p> <p>22 service center, the Kentucky service center.</p> <p>23 Q. Oh, okay. That -- is your --</p> <p>24 A. My rate is included in here.</p> <p>25 Q. Gotcha. What is your rate?</p>	<p>175</p> <p>1 an issue with this particular model and other models</p> <p>2 involving light bulbs staying on, is that right?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. With respect to any of your experience, work</p> <p>5 experience, have you ever had any involvement with</p> <p>6 respect to the design of lights or lighting assemblies</p> <p>7 for refrigeration systems?</p> <p>8 A. For the slush machines, I did.</p> <p>9 Q. What type of lights was that?</p> <p>10 A. We primarily used fluorescents.</p> <p>11 Q. And how many volts did those fluorescents run?</p> <p>12 A. Well, we used line voltage, and then what we did was we</p> <p>13 stepped it down to meet UL, because it was for the top</p> <p>14 lights.</p> <p>15 Q. Stepping down to what?</p> <p>16 A. Below 20 -- I think it was below 28, and I think we</p> <p>17 went down to 24.</p> <p>18 Q. Okay. So step it down from -- what?</p> <p>19 A. Okay. Your line voltage is typically -- you know, in</p> <p>20 this case, we were using 120 volt AC. We would</p> <p>21 transform it down to 24 volts AC, I believe, for the</p> <p>22 light. I'd have to go back. But that -- that gets you</p> <p>23 below the threshold of what's considered high voltage</p> <p>24 potential for UL.</p> <p>25 Q. All right. And the design of these -- you actually</p>
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<p>177</p> <p>1 designed what component? The whole lighting assembly</p> <p>2 or --</p> <p>3 A. I designed the lighting assembly, and I worked with</p> <p>4 the -- a Canadian company actually who designed the</p> <p>5 circuit board, the circuitry to fire the fluorescent</p> <p>6 bulb -- the light tube, bulb.</p> <p>7 Q. And the fluorescents, how many watts were the</p> <p>8 fluorescents?</p> <p>9 A. What I can tell you is I don't -- I don't -- one of</p> <p>10 the -- I don't remember the exact wattage. But the --</p> <p>11 it was their typical 24 inch bulb.</p> <p>12 Q. Okay.</p> <p>13 A. We used a one inch diameter, and we used the high</p> <p>14 filament temperature, you know, we were using the high</p> <p>15 end to give you full color transmission, maximum color</p> <p>16 transmission.</p> <p>17 Q. And what was the -- help me understand what the light</p> <p>18 was intended to illuminate. We've got a --</p> <p>19 A. You've seen these visual slush machines.</p> <p>20 Q. Yeah.</p> <p>21 A. They have a -- basically, one of the big things that</p> <p>22 catches your eye when you walk in is they have lighting</p> <p>23 that illuminates both the Slush Puppie, or whatever the</p> <p>24 signage is, as well as the product being swirled around</p> <p>25 in the clear visual bowls. So that's the hallmark of a</p>	<p>179</p> <p>1 Q. What was it that the Canadian company did with respect</p> <p>2 to the circuit board?</p> <p>3 A. They designed the actual circuit, laid out the board,</p> <p>4 and produced and manufactured -- I believe they</p> <p>5 produced and manufactured the board for us. I know for</p> <p>6 sure they designed the circuit, laid it out on the</p> <p>7 circuit board and did, you know, assembled that. I</p> <p>8 don't recall whether -- I'm pretty sure that they</p> <p>9 produced the actual circuit board, finished product a</p> <p>10 well.</p> <p>11 Q. And what provision of UL did you bring it into</p> <p>12 compliance with?</p> <p>13 A. I don't recall the specific numbers. It's been long</p> <p>14 enough now that I'd have to look them back up again.</p> <p>15 Q. And the slushie machines were for sale and/or use in</p> <p>16 the United States?</p> <p>17 A. Well, both within and outside the country. I mean,</p> <p>18 Canada as well as Europe.</p> <p>19 Q. When you designed the lighting assembly, did you do any</p> <p>20 testing with respect to potential fire hazards?</p> <p>21 A. Absolutely.</p> <p>22 Q. What type of testing did you do?</p> <p>23 A. UL mandates a lot of different testing. You've got the</p> <p>24 -- you've got flammability requirements for the</p> <p>25 materials. You've got, obviously, for the circuit</p>
<p>178</p> <p>1 visual machine.</p> <p>2 Q. And you said that you worked with a Canadian company</p> <p>3 with respect to the circuit board?</p> <p>4 A. Yes. They designed the actual lighting circuit for me,</p> <p>5 the custom circuit board to drive that light fixture.</p> <p>6 Q. And when the slushie machine was plugged in and let's</p> <p>7 say it's in use at a store?</p> <p>8 A. Yes.</p> <p>9 Q. Is the light always on, or is it on and off?</p> <p>10 A. The light is always on when the machine is producing</p> <p>11 saleable product.</p> <p>12 Q. Okay.</p> <p>13 A. That's the way it was designed. It was intended to be</p> <p>14 on during machine operation. Every slush machine goes</p> <p>15 into a defrost cycle, typically during non-business</p> <p>16 hours but not necessarily. It's whenever they set it</p> <p>17 to do it. And when it was in defrost, one of the</p> <p>18 indications would be the light was off.</p> <p>19 Q. So with respect to the light, you designed the lighting</p> <p>20 assembly, right?</p> <p>21 A. The enclosure, the mounting of the circuit board, the</p> <p>22 wiring, you know. Basically we took all the components</p> <p>23 assembling the light fixture that met the requirements.</p> <p>24 Q. And what was the Canadian company?</p> <p>25 A. Please?</p>	<p>180</p> <p>1 board itself within mounting requirements for it, and</p> <p>2 isolation, wiring of sockets. I think in one of the</p> <p>3 tests we -- with UL, was they -- you basically test</p> <p>4 voltage ranges and basically failure modes for your</p> <p>5 circuitry. I don't recall all the specific tests. But</p> <p>6 we certainly had to -- there were -- there were basic</p> <p>7 tests you had to perform to make sure that you were</p> <p>8 using appropriate materials, in the appropriate manner,</p> <p>9 with the appropriate spacings where they weren't likely</p> <p>10 -- as likely to result in a fire. You're trying to</p> <p>11 minimize that. You can never 100 percent eliminate it</p> <p>12 but you can minimize it. There are certain standards</p> <p>13 you have to do.</p> <p>14 Q. With respect to the materials, did you ever test any of</p> <p>15 the materials to the point that they combusted?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Which -- which materials on the slushie</p> <p>18 machines -- well, strike that.</p> <p>19 In the testing that you did, for this --</p> <p>20 A. It wasn't required for UL. But, I mean, we -- clearly,</p> <p>21 for my own sake, you know, sake, I just like to verify</p> <p>22 some things. So I -- yeah, I did some informal</p> <p>23 testing.</p> <p>24 Q. And what was it that combusted?</p> <p>25 A. In --</p>



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<p>181</p> <p>1 Q. During your testing?</p> <p>2 A. I mean, you've got to understand, I was -- when I was</p> <p>3 -- I was testing things to failure. So, I mean, I</p> <p>4 combusted anything that was around it just to</p> <p>5 understand how it was going to react, what kind of</p> <p>6 circumstances it would take to ignite it.</p> <p>7 Q. Okay.</p> <p>8 A. So, I mean, you know, some of the things you do, like</p> <p>9 with UL, with transformers and circuit boards, you'll</p> <p>10 do a -- you'll lay the gauze over the top and see</p> <p>11 whether that's ignited, and if it is, you know, how it</p> <p>12 burns. And basically the vertical versus the</p> <p>13 horizontal burn ratings of the materials. The other</p> <p>14 thing was important was making sure these things didn't</p> <p>15 discolor over short periods of time.</p> <p>16 Q. I see.</p> <p>17 A. Because even if they don't combust, if you expose them</p> <p>18 to certain environments and certain conditions, they</p> <p>19 can discolor and look bad.</p> <p>20 Q. So I understand that UL would have a requirement for</p> <p>21 materials that you use in their ratings with respect to</p> <p>22 combustion?</p> <p>23 A. Yes.</p> <p>24 Q. But if I understand you, you're saying that in addition</p> <p>25 to that, you actually tested certain materials to the</p>	<p>183</p> <p>1 BY MR. FRANCO, CONTINUING:</p> <p>2 Q. Just one other thing, it was the photo. Before your</p> <p>3 deposition today, I'm sure you looked at your report,</p> <p>4 is that right? Was there anything else that you</p> <p>5 reviewed other than your report in preparation for</p> <p>6 today?</p> <p>7 A. Basically I went through my files to make sure that I</p> <p>8 had provided you everything that you had requested, or</p> <p>9 at least provided it to counsel here. And then I think</p> <p>10 they provided it to you.</p> <p>11 Q. Okay.</p> <p>12 A. So I reviewed everything that you have, essentially.</p> <p>13 Q. Okay. So nothing else other than what's in this room?</p> <p>14 A. No. I mean, not that I can think of.</p> <p>15 Q. All right. You're familiar with what to do with your</p> <p>16 signature for this deposition? Or you want me to</p> <p>17 explain?</p> <p>18 A. I'm familiar, but go ahead.</p> <p>19 Q. All right. Do you want to waive or reserve?</p> <p>20 MR. MOSS: He'll sign it. He'll reserve.</p> <p>21 THE WITNESS: That's what I -- yes.</p> <p>22 MR. FRANCO: Show he'll reserve. Okay.</p> <p>23 THE WITNESS: I'd like to review it and sign</p> <p>24 it.</p> <p>25 MR. FRANCO: You got it. All right. I</p>
<p>182</p> <p>1 point that they actually combusted?</p> <p>2 A. I did some verification tests, just to make sure that</p> <p>3 what I was getting was what we thought we were getting.</p> <p>4 Primarily because what ends up happening is after</p> <p>5 you -- these materials can have these ratings. But</p> <p>6 then after you process them through a manufacturing</p> <p>7 process, it's good that there's some verification just</p> <p>8 to make sure you haven't altered those properties, or</p> <p>9 you don't have any unintended consequences. At least</p> <p>10 as much as possible you're trying to minimize that</p> <p>11 possibility.</p> <p>12 Q. I understand you were telling me earlier about Mr.</p> <p>13 Cottingham did mostly the investigation pertaining to</p> <p>14 the structure of the house, and yours pertained</p> <p>15 primarily to the refrigerator. But did you do any</p> <p>16 depth of char measurements at the scene of the fire?</p> <p>17 A. When you say depth of char, I mean, I certainly</p> <p>18 observed. That is, went around and observed the depth</p> <p>19 of char.</p> <p>20 Q. Did you actually measure the depth of char?</p> <p>21 A. No.</p> <p>22 Q. Almost done.</p> <p>23 A. Okay.</p> <p>24 MR. MOSS: That's the first time I've</p> <p>25 believed you.</p>	<p>184</p> <p>1 think we're done. Thank you.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 VIDEO OPERATOR: All right. It is now 5:24.</p> <p>4 This concludes the video deposition of William Mers</p> <p>5 Kelly. We're now off the record.</p> <p>6 (Deposition concluded at 5:24 p.m.)</p> <p>7 * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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<p>1 STATE OF MICHIGAN) 2) SS 3 COUNTY OF MACOMB) 4 CERTIFICATE OF NOTARY PUBLIC 5 I certify that this transcript is a complete, 6 true, and correct record of the testimony of the witness 7 held in this case. 8 I also certify that prior to taking this 9 deposition, the witness was duly sworn or affirmed to tell 10 the truth. 11 I further certify that I am not a relative or an 12 employee of or an attorney for a party; and that I am not 13 financially interested, directly or indirectly, in the 14 matter. 15 In witness whereof, I have hereunto set my hand 16 at Warren, Michigan, County of Macomb, State of Michigan, 17 Monday, February 20, 2012. 18 19 20 21 22 Robert E. Bouck, CSR-3530 23 Certified Shorthand Reporter 24 Notary Public, Macomb County, Michigan 25 My Commission expires: August 3, 2013</p>	185	<p>1 DEPOSITION ERRATA SHEET 2 Page No. _____ Line No. _____ Change to: _____ 3 _____ 4 Reason for change: _____ 5 Page No. _____ Line No. _____ Change to: _____ 6 _____ 7 Reason for change: _____ 8 Page No. _____ Line No. _____ Change to: _____ 9 _____ 10 Reason for change: _____ 11 Page No. _____ Line No. _____ Change to: _____ 12 _____ 13 Reason for change: _____ 14 Page No. _____ Line No. _____ Change to: _____ 15 _____ 16 Reason for change: _____ 17 Page No. _____ Line No. _____ Change to: _____ 18 _____ 19 Reason for change: _____ 20 Page No. _____ Line No. _____ Change to: _____ 21 _____ 22 Reason for change: _____ 23 _____ 24 SIGNATURE: _____ DATE: _____ 25 WILLIAM C. MERS KELLY, P.E.</p>	187
<p>1 DEPOSITION ERRATA SHEET 2 3 4 Our Assignment No. 310950 5 Case Caption: CITIZENS, V. LG ELECTRONICS, ET AL. 6 CASE NO: 3:11-CV-40 7 8 DECLARATION UNDER PENALTY OF PERJURY 9 I declare under penalty of perjury that I have read the 10 entire transcript of my deposition taken in the captioned 11 matter or the same has been read to me, and the same is true 12 and accurate, save and except for changes and/or 13 corrections, if any, as indicated by me on the DEPOSITION 14 ERRATA SHEET hereof, with the understanding that I offer 15 these changes as if still under oath. 16 Signed on the _____ day of _____, 2012. 17 18 19 20 WILLIAM C. MERS KELLY, P.E. 21 22 23 24 25</p>	186	<p>1 DEPOSITION ERRATA SHEET 2 Page No. _____ Line No. _____ Change to: _____ 3 _____ 4 Reason for change: _____ 5 Page No. _____ Line No. _____ Change to: _____ 6 _____ 7 Reason for change: _____ 8 Page No. _____ Line No. _____ Change to: _____ 9 _____ 10 Reason for change: _____ 11 Page No. _____ Line No. _____ Change to: _____ 12 _____ 13 Reason for change: _____ 14 Page No. _____ Line No. _____ Change to: _____ 15 _____ 16 Reason for change: _____ 17 Page No. _____ Line No. _____ Change to: _____ 18 _____ 19 Reason for change: _____ 20 Page No. _____ Line No. _____ Change to: _____ 21 _____ 22 Reason for change: _____ 23 _____ 24 SIGNATURE: _____ DATE: _____ 25 WILLIAM C. MERS KELLY, P.E.</p>	188



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